An Exploration of Promising Practices in Response to Human Trafficking in Canada

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Executive Summary

The report

This report was commissioned by the Government of Manitoba on behalf of the Federal-Provincial-Territorial ("FPT") Forum of Senior Officials responsible for the Status of Women. Its purpose is to identify and explore promising practices focused on human trafficking prevention and victim support that could be considered by Canadian Federal/Provincial/Territorial ("FPT") governments to better address human trafficking in Canada.

The report has three parts. The first part discusses the legal and sociological context required to understand human trafficking issues as they relate to prevention and victim services. In this regard, the Trafficking Protocol to the Convention Against Transnational Organized Crime, the first internationally agreed upon definition of trafficking in persons, frames the discussion. The report outlines Canada's laws against human trafficking: section 279.01 of the Criminal Code, passed in 2005, and section 118 of the Immigration and Refugee Protection Act, passed in 2002. Canada's existing human trafficking coordination bodies and victims services at the federal, provincial and territorial levels are briefly canvassed. The second section explores promising practices in human trafficking prevention and victim services while the third offers brief conclusions and recommendations on the practices presented.

Lack of reliable information

Canada has experienced difficulty in identifying victims of human trafficking, which presents a challenge in developing policy responses. The number of trafficking victims within Canada remains unknown. The RCMP offered an estimate in 2004, but it has since rescinded it and currently offers no new estimate in its place because of the difficulty of accurately estimating Canada's human trafficking problem. This difficulty is compounded by the fact that some non-governmental organizations claim that all prostitution constitutes sex trafficking. The dearth of reliable information about trafficking is particularly acute with respect to labour trafficking. There are no thorough reports on labour trafficking in Canada and very few interviewees could provide concrete information on what Canada's labour trafficking problems might be. It is also important to recognize that victim identification is challenging as victims rarely self-identify for a variety of reasons.

Canadian federalism

It is essential to consider Canada's federal system in assessing whether certain promising anti-human trafficking practices from other countries would work in Canada. Some of the anti-trafficking measures proposed will raise questions related to the division of governmental powers and responsibilities in Canada, which will need to be fully explored in order to respect federal/provincial/territorial responsibilities.

Review of promising practices

The first promising practice identified is the development of a national anti-trafficking structure, which several states have adopted to combat human trafficking. Three important components for such structure include:

(1) a national action plan
(2) a national rapporteur and
(3) a national referral mechanism

These three components provide a comprehensive strategy and tools for:

- understanding a country's trafficking problem;
- identifying victims;
- developing informed policies;
- organizing government action; and, ultimately
- delivering coordinated services to victims.

National Action Plans assist in articulating a coherent, cohesive and comprehensive strategic and operational plan to counter human trafficking. To be effective, the plan should outline methods of coordination and cooperation among different levels of government, delegate responsibilities between agencies and contain a budget, timelines and deadlines.

A National Rapporteur is an individual mandated to report on the nature and extent of human trafficking and on the effect of the anti-trafficking policies and efforts pursued by the government. The report highlights the Dutch National Rapporteur, a successful example of such a rapporteur. The key to the Dutch Rapporteur's success is her independence from other agencies.

National Referral Mechanisms are coordinated strategic partnerships between government and non-governmental organizations that link trafficking victims with services and ensure that victims' rights are protected. Considered a promising practice, NRMs:

- provide a multidisciplinary and cross-sector approach to combating human trafficking;
- build trust between the government sector and the NGO sector;
- effectively connect victims to comprehensive services; and
- improve policy and procedures on a broad range of victim-related issues.

The report explores two examples of well-functioning NRMs: Belgium and Germany.

The second promising anti-trafficking practice relates to promoting women's equality through laws and policies. Sweden's experience of promoting women's equality rights through broad laws and policies that focus on reducing violence against women represents a unique model which has reduced human trafficking in Sweden over the past decade.

The critical aspects of the Swedish model include:

- A comprehensive gender equality program;
- Increased and sustained resources for gender equality programs;
- Policies that focus on demand reduction, i.e. focus on buyers' actions rather than sellers'; and
- Laws that decriminalize selling sex and criminalize buying sex.

The Swedish Sex-Purchase Law decriminalizes the sale of sex, criminalizes its purchase and establishes programs to assist women in existing prostitution. Sweden indicates that this law has had direct effect in decreasing sex trafficking of women in the country over the past decade. Norway, Finland and Iceland have initiated similar laws.

The third promising practice is to enhance labour monitoring in sectors where foreign workers are most vulnerable, particularly in areas such as domestic service and agriculture. The UK's Gangmasters Licensing Authority ("GLA") is examined as an effective way to decrease labour trafficking in certain industries. The GLA focuses on:

- making all labour standards publicly available;
- ensuring that employers are aware of these standards;

- conducting inspections, including surprise inspections, to ensure ongoing compliance; and
- imposing penalties, including jail sentences for abusive practices.

The fourth promising practice is to support effective non-governmental trafficking victim service providers. Certain non-governmental organizations in the United States have experienced relative success compared to government in identifying trafficking victims. The report highlights two effective NGO trafficking victim service programs that report high success rates at rehabilitating trafficking victims. The first program focuses on survivor leadership and mentoring and the second provides job-training programs to trafficking victims.

The fifth promising practice suggests working with Aboriginal communities on human trafficking prevention programs. Studies on human trafficking in Canada conclude that the majority of people trafficked within Canada are Aboriginal women and children victims of sex trafficking. Given the complex root causes of sex trafficking of Aboriginal women and children, any one anti-trafficking practice will be insufficient to solve the problem on its own. The report highlights several program ideas that either target the particular vulnerabilities of Aboriginal communities or provide culturally relevant victims services. These ideas include programs to reduce school dropout rates and develop economic opportunities in Aboriginal communities; raise public awareness of human trafficking for Aboriginal leaders, government officials, and the public; and support and strengthen Aboriginal family and community networks, such as survivor-led shelters, transition programs and specialized services for Aboriginal women and children vulnerable to trafficking.

Recommendations for consideration

In conclusion, the following proposals are offered for consideration, based upon the findings in the report.

1. Develop a system to collect reliable and evidence-based information about the incidence of human trafficking in Canada.

2. Develop a comprehensive, coordinated approach to human trafficking. Such an approach could integrate promising practices that Canada has already implemented, such as the Temporary Residence Permit Program for trafficked victims.

3. Promote gender equality through laws and programs to reduce violence against women and children.

4. Request relevant FPT mechanisms to further explore how the existing labour framework governing sectors that employ migrant and foreign workers could be enhanced through licensing, compliance and enforcement mechanisms to address human trafficking.

5. Provide training on human trafficking victim identification to a broader range of federal, provincial, territorial and municipal officials and community service providers, including first responders, health care workers, faith-based communities and other community service organizations. Support victim services organizations that seek to reintegrate and provide vocational training for trafficked victims.

6. Recognize the vulnerability of Aboriginal people, particularly children and women, to trafficking as well as the complexity of contributing factors. Consider continuing and enhancing programs that address these vulnerabilities.

Many of the above proposals provide promising avenues to further explore Canadian needs and its international obligations with regards to the complexity of human trafficking. During the information gathering and review process it became clear that these suggestions would require further research and analysis with respect to the policy, budgetary and implementation processes.

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1 Introduction

This report was commissioned by the Government of Manitoba on behalf of the Federal-Provincial-Territorial ("FPT") Forum of Senior Officials responsible for the Status of Women. The purpose of the report is to identify practices – either in Canada or elsewhere – that could inform Canadian efforts to prevent human trafficking and offer services and supports to those who are victims of human trafficking. The report identifies five promising practices focused on human trafficking prevention and victim support.[1] Given that the nature and extent of trafficking is still poorly understood in Canada, it is understandably challenging to choose narrowly tailored prevention or victim services programs that target existing needs. For this reason, more general recommendations were selected, which could be further refined with additional information.

The report is based on a three-month review of publicly available reports and semi-structured interviews with key interviewees. The literature collected was from individuals and organizations that focused on promising practices in preventing human trafficking and providing services and support to trafficked victims. This material was reviewed for promising practices that appeared to be relevant to the Canadian context. In particular, the report draws on promising practices from Canada, the United States, Australia and Europe, given their similar status as destination countries for trafficking victims as well as their similar capacities to carry out prevention and victim support, although other international examples were also reviewed.[2] The list of reports and studies reviewed is attached as Appendix A.

The semi-structured interviews were conducted with key interviewees in the area of human trafficking, both in Canada and abroad. Interviewees included police, prosecutors, government officials, academics, victim service providers, social workers, and representatives from non-governmental organizations ("NGOs") (primarily non-governmental victim support services), and international organizations focused on human trafficking issues. Interviewees were asked to respond to questions based on their knowledge and experience of human trafficking. Site visits were made to several of the victim services groups included in the report that reported high percentages of victims who exited trafficking and were not retrafficked.

The FPT Forum of Status of Women Senior Officials and the International Center for Criminal Law and Criminal Justice Policy ("ICCLR") initially indentified interviewees. Interviewees from the initial group were requested to provide names of others knowledgeable in the field of human trafficking and victim services and these individuals were then interviewed. The list of interviewees and their affiliations is attached as Appendix B.[3]

After reviewing the responses, practices were assessed for their reported success rate, grounding in empirical evidence, innovative approach, conformity to reports on good anti-trafficking practice and their adoption by other governments in destination countries. A group of promising practices that demonstrated one or more of these characteristics was selected and each was examined in further detail to determine why these practices were considered to be promising and how they were structured. Five practices were selected from this group that appeared best tailored to the Canadian context, based on Canada's current responses to human trafficking, its existing protection framework, identified challenges

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[1] Not all government agencies may agree with the promising practices selected.

[2] Canada has been categorized as a destination country. See US Department of State, *Trafficking in Persons Report* (USA: Department of State, June 2009), online: http://www.state.gov/g/tip/rls/tiprpt/2009/ at 98. See also UNODC, *Global Initiative to Fight Human Trafficking* (Vienna: UNODC, 2007).

[3] Given time and funding constraints, we were not able to interview many individuals who may have been able to provide relevant information for this report. Nor were we able to incorporate all comments that we received after the deadline, although efforts were made to incorporate many of them.

that human trafficking poses to the country, as well as Canada's political structure and culture. The report explores each of these five promising practices through case studies.[4] As the report is limited in scope, Canada's federal structure and specific legal considerations are not addressed in detail, which may be required for certain practices to be effectively implemented in Canada. A brief description of issues raised by Canadian federalism is laid out below. At the request of the FPT Forum of Status of Women Senior Officials, practices at both the policy and the victim services level were selected. In addition, the Forum requested that the report specifically address labour trafficking and trafficking of Aboriginal peoples.

This report has three parts. The first part discusses the legal and sociological context required to understand human trafficking issues as they relate to prevention and victim services. The second explores five promising practices in human trafficking prevention and victim services. The third offers brief conclusions and recommendations on the practices presented.

1.1 Context

In May 2002, Canada undertook to cooperate with other countries in the fight against international trafficking when it ratified the additional *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* to the *Convention against Transnational Organized Crime*.[5] By ratifying the Trafficking Protocol, Canada reaffirmed its commitment to prevent human trafficking and protect victims of human trafficking within its borders. The following section briefly describes the Trafficking Protocol followed by an overview of anti-trafficking efforts in Canada. The section concludes by discussing important issues related to human trafficking victims in Canada.

1.1.1 The Trafficking Protocol

The *Trafficking Protocol* provides the first internationally agreed upon definition of trafficking in persons. Its framework focuses on the so-called "three P's:" the prevention of trafficking, protection of victims and prosecution of offenders. This report focuses on prevention of human trafficking and one aspect of victim protection: the services and supports that assist in a trafficking victim's recovery. In addition, the report focuses on partnerships, often thought of as the fourth P.[6]

The *Trafficking Protocol* defines trafficking in persons to mean:

> the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual

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[4] A case study approach makes particular sense due to the lack of empirical evidence on questions of trafficking prevention and trafficking victims in Canada and elsewhere.

[5] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, G.A. res. 55/25annex II 55, UN GAOR, Supp. No. 49, UN Doc. A/45/49 (Vol. I) (2001) 1 [*Trafficking Protocol*] at 60. Canada ratified the *Trafficking Protocol* on 13 May 2002 and the Protocol entered into force on 25 December 2003.

[6] The fourth P of "Partnership" was added to the human trafficking framework by the UN Secretary General in 2008.

> exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;[7]

The three basic elements of trafficking are thus:

1) the act (recruitment, transportation, transfer, harbouring or receipt)
2) the means (threat or use of force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving/receiving payments/benefits to achieve consent of a person having control over another person)
3) the purpose of exploitation

Article 5 of the *Trafficking Protocol* requires States Parties to criminalize trafficking in persons. Various provisions of the *Trafficking Protocol* mandate specific actions in the areas of prevention and protection.

Article 6 of the *Trafficking Protocol* details a variety of measures designed to provide for the physical, psychological and social recovery of trafficked persons.[8] Article 7 requires States Parties to consider providing temporary or permanent residence to foreign national victims of trafficking within their territory.

Article 9 of the *Trafficking Protocol* requires States Parties to establish comprehensive policies, programs and other measures: (a) To prevent and combat trafficking in persons; and (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

Under the same article, States Parties, including Canada, also agreed that they:

> shall take or strengthen measures...to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

In addition States Parties, including Canada, undertook to:

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[7] A victim's consent is irrelevant to the question of whether or not trafficking occurred where one or more of the delineated means is employed. See *Trafficking Protocol, supra* note 5, Art. 3(b). Further, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation meets the trafficking definition even if none of the means in subparagraph (a) are employed. See *Trafficking Protocol, supra* note 5, Art. 3(c).

[8] *Trafficking Protocol, ibid.*, Art. 6(3) states:
"Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
(a) Appropriate housing;
(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
(c) Medical, psychological and material assistance; and
(d) Employment, educational and training opportunities.
6(4) Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
6(5) Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6(6) Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

> adopt or strengthen legislative or other measures, such as educational, social or cultural measures…to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.[9]

1.1.2 Canada's criminal laws against human trafficking

In 2005, Canada updated its *Criminal Code*[10] to specifically prohibit human trafficking in Canada. In brief:

Section 279.01(1) of the *Criminal Code* prohibits trafficking in persons:

> Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or who exercises control or influence over the movements of a person, for the purposes of exploiting them or facilitating their exploitation, commits an indictable offence.

Section 279.02 prohibits the receipt of a financial or other material benefit from the commission of the trafficking in persons offence. Section 279.03 prohibits withholding or destroying travel or identity documents in order to facilitate the commission of the trafficking in persons offence.

Section 279.04 defines exploitation, for the purpose of the trafficking in persons offences, as:

> (a) cause[ing] them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or
>
> (b) cause[ing] them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.[11]

In addition, since June 2002, section 118 of the *Immigration and Refugee Protection Act*[12] already prohibited human trafficking into Canada, with a maximum penalty of life imprisonment and/or a fine of up to one million dollars, although no convictions have been obtained under this provision.[13]

1.1.3 Canadian federalism

Canada's federal system is important to consider in assessing whether certain promising anti-human trafficking practices from other countries would work in Canada. The federal parliament and the provincial legislative assemblies in Canada are independent with respect to certain areas of legislative authority, while other areas hold shared jurisdiction and responsibility. As a general matter, addressing the needs of victims – one of the foci of this report – is an area of shared responsibility between the

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[9] *Trafficking Protocol, supra* note 5, Art. 9(5).
[10] *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*].
[11] *Ibid.*
[12] *Immigration and Refugee Protection Act* (2001, c. 27) [*Immigration and Refugee Protection Act*]
[13] *Immigration and Refugee Protection Act, ibid.*, s. 118. Interview of Matthew Taylor, Counsel, Department of Justice, Ottawa (7 May 2010).

federal and provincial governments.[14] While victim services and assistance exist in all provinces and territories, certain other programs, measures and initiatives targeting victims of crime are administered federally, such as the temporary residence permits for internationally trafficked victims available from Citizenship and Immigration Canada ("CIC").[15] Programs and initiatives focused on the prevention of human trafficking crimes – the other focus of this report – will likewise need to be evaluated to determine whether they should be administered by the provinces or the federal government, or whether they could similarly be an area of shared responsibility.[16] In short, numerous questions would be presented in the development of anti-trafficking measures, including those on:

- Allocation of federal and provincial government responsibilities and the degree and manner in which the other level of government should be involved.
- Protection of personal data, data sharing and privacy law considerations.
- The feasibility of achieving political buy-in from the provinces and territories for federal initiatives.
- Procurement of sustainable funds from the provinces and/or federal government.

Certain FPT collaborative agreements and inter-jurisdictional mechanisms dealing with criminal justice issues could be further explored in the development of proposed anti-trafficking programs, as discussed further below in promising practice one.

1.1.4 Canada's existing human trafficking coordination bodies

The Federal Interdepartmental Working Group on Trafficking in Persons ("IWGTIP"), co-chaired by Public Safety Canada and Justice Canada, currently coordinates Canada's anti-trafficking efforts of 17 government departments and agencies.[17] A key enforcement partner of this Working Group is the RCMP's Human Trafficking National Coordination Centre ("HTNCC").[18] The HTNCC was established in 2005 to provide a focal point for law enforcement in their efforts to combat criminal organizations involved with human trafficking.[19]

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[14] Department of Justice, *Policy Centre for Victim Issues: Canadian Statement of Basic Principles of Justice for Victims of Crimes* (2003), online: http://canada.justice.gc.ca/eng/pi/pcvi-cpcv/index.html; http://canada.justice.gc.ca/eng/pi/pcvi-cpcv/pub/03/princ.html.

[15] CIC information provided by Derrick Deans, Manager, Social Policy, National Headquarters - Strategic Policy and Priorities Sector, Citizenship and Immigration Canada (14 May 2010). See also Citizenship and Immigration, *Protection and Assistance for Victims of Human Trafficking* (updated 19 January 2009), online: Citizenship and Immigration http://www.cic.gc.ca/english/information/applications/trp.asp.

[16] *Constitution Act*, *ibid.*, ss. 91 (27), 92 (13).

[17] Department of Justice, *Trafficking in Persons (Human Trafficking) – Coordination and Collaboration*, (Updated 31 July 2009), online: Department of Justice http://www.justice.gc.ca/eng/fs-sv/tp/p4.html.

[18] *Ibid.*

[19] The HTNCC resides within the Immigration and Passport Branch in Ottawa. The Centre focuses on developing tools, protocols and guidelines to facilitate human trafficking investigations; coordinating national anti-trafficking awareness and training initiatives; identifying areas for coordination; developing international partnerships; and, coordinating and facilitating the dissemination of intelligence. RCMP, *Human Trafficking National Coordination Centre*, (Updated 04 December 2008), online: RCMP http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm.

1.2 *Canada's existing protection framework*[20]

Responsibility for protection of victims is shared between the federal government and the provinces and territories. A review of these services is required to know how to best enhance human trafficking victims' protection. Non-governmental victim support services also provide important services to human trafficking victims, as discussed below.

1.2.1 Federal services

The Temporary Residence Permit ("TRP") program, issued by CIC, is a federal service specifically for internationally trafficked victims.[21] Between May 2006 and the end of December 2009, 54 TRPs were issued to 43 foreign national victims of trafficking.[22] This program was established to assist victims of trafficking by securing their immigration status with a special fee-exempt permit. The TRP may be issued for up to 180 days and can, depending on the person's situation, be reissued at the end of this period at the discretion of CIC officials. A longer-term (or subsequent) TRP can be issued in cases where a more complete verification of the facts provides reasonable grounds for CIC officials to believe that the individual is a genuine victim of trafficking in persons. The longer-term permit has a higher burden of proof and is issued if a CIC officer determines that the victim should remain in Canada. In deciding whether to issue a longer-term temporary resident permit, the CIC officer considers: 1) whether it is reasonably safe and possible for the victim to return to and re-establish a life in their country of origin or last permanent residence; 2) whether the victim is needed and willing to assist authorities in investigation and prosecution of a trafficking offence; or 3) any other factor that, in the opinion of the officer and given the circumstances, justifies issuing a TRP.

Those who receive a TRP are eligible for health-care and trauma counselling through the Interim Federal Health Program, and may also apply for a fee-exempt work permit. Upon issuing the TRP, the immigration officer helps the trafficking victim contact relevant victim services. In Canada, victims of trafficking are officially not required to testify against their trafficker to gain temporary or permanent resident status. Victims who are foreign nationals have the option of returning home at their own expense.[23]

The federal government also funds non-governmental organizations and cooperates with international bodies on developing promising practices.[24] Finally, Canada has led public awareness programs via web-based information, booklets, posters, pamphlets and community discussion.[25]

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[20] "Protection" in this context is not meant to suggest a rescue-mentality approach, but rather protection as conceived in Articles 6, 7 and 9 of the *Trafficking Protocol*, as discussed above. See *Trafficking Protocol, supra* note 5, arts. 6, 7, 9.

[21] Domestic victims of human trafficking have access to victim services, such as health care and social assistance, as of right without the need for a special permit.

[22] Information provided by Derrick Deans, *supra* note 15.

[23] See Citizenship and Immigration Canada, *Protection and Assistance for Victims of Human Trafficking* (Updated 19 January 2009), online: Citizenship and Immigration Canada,, http://www.cic.gc.ca/english//information/applications/trp.asp#tphp%20idtphp; See also Future Group, *Ensuring Effective Implementation of Measures to Protect Victims and Creation of a Canadian Counter-Human Trafficking Office* (Ottawa: Brief to the Standing Committee on the Status of Women, November, 2006), online: http://www.thefuturegroup.org/sitebuildercontent/sitebuilderfiles/brief_of_the_future_group_to_standing_committee.pdf.

[24] Department of Justice, *Victim Issues, supra* note 14.

[25] Department of Justice, *Trafficking in Persons: A Brief Description*, (Updated 21 October 2009), online: Department of Justice http://www.justice.gc.ca/eng/news-nouv/nr-cp/2005/doc_31766.html.

1.2.2 Provincial and Territorial services

The provinces and territories also administer numerous programs and services that may be available to trafficking victims. This section briefly reviews these services to inform the discussion of promising practices that appears in the following section of this report.

Services offered at the provincial/territorial ("PT") level vary by jurisdiction.[26] Most PT jurisdictions provide emergency income assistance to trafficked persons through existing social services plans with some variation in schemes depending on whether the victim is a Canadian citizen/permanent resident or a foreign victim. Emergency shelters are accessible to victims of trafficking across jurisdictions but shelters may not specifically identify that they offer services to victims of trafficking. This is mainly because of a lack of exposure to, or experience in, sheltering trafficked persons. In most jurisdictions, victims of trafficking may access government/community victim services programs, while British Columbia provides specialized victim services tailored to trafficked persons. Some law enforcement agencies have policies, supports and services specific to trafficking in persons, while others are in various stages of developing these.

Provincial coordination of the above services varies greatly. British Columbia is the only province to have designated a specific office on human trafficking, the Office to Combat Trafficking in Persons ("OCTIP"). The office opened in 2007 and is charged with responsibility for the overall coordination of the province's strategy to address human trafficking. OCTIP reports to the Deputy Solicitor General and is funded by the B.C. Ministry of Public Safety and Solicitor General and Children and Family Development.[27] In 2009, OCTIP reports that their office assisted six trafficking victims who had received TRPs, four of whom were labour trafficking victims who were placed in Salvation Army's new 10-bed shelter for trafficked victims in British Columbia, Deborah's Gate in Vancouver.[28] The office also reports to have handled many other cases of "potentially trafficked" victims.[29] Provincial non-governmental victim support services that have collaborated with this office report, however, that increased and sustained resources are needed for the office to be as effective as possible.

Coordination of services is handled by various entities in other jurisdictions as well.

- The Action Coalition on Human Trafficking (ACT) has been formed in Alberta. ACT is a coalition of government agencies, nongovernmental organizations, survivors of trafficking and the general public who are concerned with identifying and responding to human trafficking in Alberta.
- In Manitoba, the Human Trafficking Response Team (HTRT) was organized by the Salvation Army in Winnipeg and includes representation from the provincial government, federal agencies, law enforcement and frontline service providers. The HTRT was formed to develop a coordinated response on the part of key stakeholders in the event that victims of human trafficking are identified in Manitoba.[30] In addition, the Assembly of Manitoba Chiefs is developing a response to human trafficking of Aboriginal women and children, with a focus on youth and women in urban centres in Manitoba.

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[26] FPT Working Group, *Jurisdictional Analysis: Survey Responses to Human Trafficking Across Canada* (November, 2009) [unpublished].

[27] Minister of Public Safety and Solicitor General, *About Us - Human Trafficking in B.C.* (2007), online: http://www.pssg.gov.bc.ca/octip/about.htm.

[28] Interview of Robin Pike, Executive Director, OCTIP (29 January 2010).

[29] *Ibid.*

[30] Interview of Dianna Bussey, Chair, Manitoba Human Trafficking Response Team and Director, Salvation Army Correctional and Justice Services, Winnipeg, Manitoba (9 March 2010).

- In Quebec, the *comité interministériel sur la traite des femmes migrantes*, chaired by the Ministry of Justice, is primarily responsible for work related to trafficking.[31] This committee is working to help establish a provisional provincial model to respond to victims' needs, most notably with regards to shelter, psychological intervention and regularization of immigration status. Their model is being developed to help shelters and other stakeholders collaborate with certain government ministries as well as other partners.[32]

Groups such as those described above could provide useful building blocks from which to develop a comprehensive Canadian anti-trafficking structure, as discussed in the first promising practice below.

1.2.3 Non-governmental victim support services

Finally, non-governmental victim support services have been helping victims of trafficking for decades, particularly victims of sex trafficking before the designation of "trafficking" was in place. Most provinces have a multitude of organizations dealing with victims of sexual violence and some groups, such as the Salvation Army, are developing trafficking-specific victim services. Few provinces have a mechanism to coordinate such services, as noted below.

Some NGOs consider all prostitution to be sex trafficking.[33] While this report does not adopt that position, given the breadth of Canada's definition of human trafficking and the fact that sex trafficking and prostitution both involve selling/providing sex acts, some instances of the sale/provision of sex acts in Canada may constitute human trafficking under Canadian law. The interplay and overlap of human trafficking and prostitution has been explored by numerous individuals and groups, including the Canadian Standing Committee on the Status of Women, the Special Rapporteur on Human Trafficking, and Canadian academics focused on human trafficking.[34]

1.3 The victims

1.3.1 Canada's trafficking problem remains undefined

In order to prevent trafficking, it is first essential to understand how severe the problem is in Canada and who is vulnerable to becoming a victim of the offense. Collecting further information on trafficking is the first step to setting up effective victim services. Unfortunately, this information is not

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[31] Québec, Sous-comité interministériel sur las traite des femmes migrantes, *Rapport 2009*, Québec, Ministère de la Justice, 25 mai 2009 à la pp. 14-15.

[32] *Ibid.* à la p. 25.

[33] See e.g. Coalition Against Trafficking in Women, *About – Coalition Against Trafficking in Women*, online: Coalition Against Trafficking in Women http://www.catwinternational.org/about/index.php.

[34] See e.g. Standing Committee on the Status of Women, *12th Report of the Standing Committee on the Status of Women: Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada*, by Yasmin Ratansi, MP (Ottawa: Standing Committee on the Status of Women, February 2007) at 1, 5, 11; Commission of Human Rights, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, UN ESC, 2006, U.N. Doc. E/CN.4/2006/62, (2006) at paras. 41-43 (finding that "for the most part, prostitution as actually practiced in the world usually does satisfy the elements of trafficking" as it is "rare that one finds a case in which the path to prostitution and/or a person's experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability (in reference to the Trafficking Protocol).; Future Group, *supra* note 23 at 6.

easy to come by – in Canada or in other countries – both because there is a lack of reliable data and because of the fragmented character of information that is available.

The number of trafficking victims within Canada remains unknown. The RCMP previously estimated in 2004 (prior to the *Criminal Code* legislation on human trafficking) that Canada has 800-1,200 trafficking victims in Canada each year, but it has since rescinded this estimate and currently offers no new estimate in its place because of the difficulty of accurately estimating Canada's trafficking problem.[35] The RCMP has recently completed a national threat assessment on human trafficking focused on trends, intelligence gaps and enforcement challenges intended to help guide enforcement efforts and prioritize resources, although the results are currently classified.[36] NGO estimates of human trafficking victims are reported to be as high as 15,000 victims a year, although the origins of such estimates are unclear.[37] Further, very few empirical studies have been conducted on this issue. Of the community-based research reports focusing on sex trafficking of women, all but one are qualitative in nature – with the main data sources comprised of interviews with trafficked women, key interviewees and health and social service providers.[38] These studies do not identify the nature of the problem or victims in a comprehensive manner.

The primary point of agreement among those working on anti-trafficking issues in Canada is that more information on trafficking victims is needed. The Standing Committee on the Status of Women has previously discussed the establishment of a national rapporteur to collect and analyze data on trafficking in persons and to consult with interviewees as to how to best implement a data collection and tracking system that would protect the integrity of police information as well as protect victims of trafficking.[39] The Canadian Center for Justice Statistics ("CCJS") of Statistics Canada is currently exploring whether a national data collection framework could be established to collect data on human trafficking in Canada. The results of this study are slated to be publically released in June 2010.[40]

1.3.1 1 The experience of victims' service providers

A primary challenge in identifying victims of human trafficking in Canada and elsewhere is that victims rarely self-identify as victims. US social workers who deal with approximately 100 human trafficking victims a year explained that it often takes approximately two months of work with a trained

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[35] Interview of Meghan Klaver, RCMP, Immigration and Passport Unit (29 March 2010); information provided by Marie-Claude Arsenault, Human Trafficking National Coordination Centre, RCMP Headquarters (23 March 2010). Nor does the 2009 US State Department Trafficking in Persons report contain victim estimates for Canada.

[36] An unclassified version of this threat assessment will be released for broader use in the next few months. Information provided by Marie-Claude Arsenault, *ibid.*

[37] See e.g. West Coast Leaf, *Position Paper on Human Trafficking for Sexual Exploitation*, (Vancouver: October 2009) at 3, cited to Alia Dharssi, "Canadian Traffic" *Ubyssey* (20 March, 2009), at 6-7.

[38] A multi-method study that combined survey and focus group methodology was conducted by Oxman-Martinez, J. and Hanley, J. in 2004. J. Oxman-Martinez, and J. Hanley, *A follow-up study of Canadian policy on human trafficking: Impacts of the immigration and refugee protection act* (Montreal: Immigration and Metropolis Working Paper # 25, 2004), online: Metropolis http://im.metropolis.net/research-policy/research_content/doc/_oxman-martinez%20trafic.pdf.

[39] Standing Committee on the Status of Women, *Outrage into Action, supra* note 34.

[40] Lucie Ogrodnik, *Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons* (Ottawa: Canadian Centre for Justice Statistics, Statistics Canada) [forthcoming in June 2010]. CCJS's feasibility study is based on cross-sectoral consultations with stakeholders in federal and provincial government agencies, law enforcement, NGOs and universities.

therapist or social worker for a victim to understand that they are a victim of a crime.[41] This two-month delay is due to various factors, including:

- psychological coercion by the trafficker;
- various mental health disorders experienced by the victim, including dissociative, post-traumatic stress, depressive and/or anxiety disorders; and
- trauma bonds with the trafficker, also loosely known as "Stockholm syndrome."[42]

Other service providers corroborated this lengthy delay in victim identification.[43]

Even where they do identify themselves as victims, trafficked individuals may not come forward for a variety of reasons, such as:

- isolation
- fear of being returned to country of origin
- fear of reprisals to themselves or loved ones by traffickers
- mistrust of government authorities
- lack of understanding of their rights
- lack of information about services offered.[44]

Finally, some victim service providers may be over-inclusive in who they determine to be "trafficked." This might occur, for example, where service providers deem all prostitution to be trafficking, regardless of whether the three basic elements of trafficking are met in an individual case. As one service provider explained, "[i]f it's the trafficking train that's going to help us bring services, we're willing to hop on board."

1.3.1.2 The experience of law enforcement

Similarly, Canadian law enforcement has also faced challenges identifying victims of trafficking. Between May 2006 and May 2008, only 31 foreign nationals were brought to the attention of immigration officials as potential human trafficking victims.[45] In 2009, Canada secured only five human trafficking

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[41] Interviews of Andriana Ongoiba, Urban Justice Center, New York, New York (11 March 2010); Jennifer Dreher, Senior Director, Anti-Trafficking Program, Safe Horizon, New York, New York (11 March 2010).

[42] *Ibid.* "Stockholm syndrome" occurs where victims have positive feelings towards their captors that seem irrational given the danger, risk or abuse endured.

[43] Interview of Jennifer Dreher *supra* note 41, who stated that less than 1% of their 75 trafficking clients a year self-identify themselves as trafficked when they enter Safe Horizon's doors. This delay was again confirmed by an organization that serves 280 female victims of sex trafficking a year. Interview with Julie Lawrence, Girls Educational and Mentoring Services, New York, New York ["GEMS"], (11 March 2010).

[44] Interviews of numerous interviewees identified in Appendix B. See also Heather J. Clawson and Nicole Dutch, *Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies from the field.* (Washington, D.C.: US Department of Health and Human Services, 2008); and Council of Europe, *Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings* (2008), online: Human Trafficking http://www.humantrafficking.org/uploads/publications/council_eur_08_rec_identi_0408.pdf.

[45] Information based on freedom of information requests undertaken by Professor Benjamin Perrin; see University of British Columbia, Media Release, "UBC Legal Expert Releases Canada's First Stats on Foreign Human Trafficking Victims" (28 October 2008). Twelve of these individuals were granted temporary residence permits ("TRPs"), seven were refused TRPs, one victim's TRP was cancelled, and one victim went missing. The 10 remaining individuals have their cases pending, or obtained another form of immigration status.

convictions under section 279.01 of the Canadian Criminal Code.[46] To place these numbers in perspective, Belgium obtained 223 convictions in 2007.[47] Currently, 35 cases where human trafficking charges have been laid are pending before Canadian courts.[48] As mentioned above, CIC reports that up to the end of 2009, 43 foreign nationals had received TRPs.[49]

Part of the explanation for the low number of convictions in Canada may be that the definition of trafficking is misunderstood. There is confusion about what trafficking means and who is a victim of the offense. Despite the definitions in the Trafficking Protocol and the Criminal Code, a large number of interviewees reported divergent understanding of the term.[50] Moreover, other crimes overlap with the human trafficking offense. The RCMP Operational Police Officer's Handbook on Human Trafficking points out that Canada's trafficking provision can conceptually overlap with other related crimes, such as passport forgery, bawdy-house offenses, living off the avails of prostitution, procuring, uttering threats, assault, sexual assault, kidnapping, forcible confinement, child abduction, extortion, fraud, intimidation, conspiracy, criminal breach of contract, etc.[51] One explanation for Canada's low number of officially identified trafficking cases may be that many of the above crimes are more familiar to police and prosecutors and often easier to prove than a charge of human trafficking.[52] In addition, there currently are no judicial interpretations of human trafficking to help clarify the offense for law enforcement.[53]

The difficulty of identifying victims of human tracking is not uniquely a Canadian problem. The number of indicators developed to assist with identification of trafficking victims evidences this widespread challenge. UNODC, for example, has issued a set of human trafficking indicators to help with victim identification.[54] Similarly, the ILO has recently developed four sets of operational indicators based on the results of a Delphi survey conducted in conjunction with the European Commission, and the RCMP has devised a list of indicators for their Operational Police Officer's Handbook.[55] BC's Office to Combat Trafficking in Persons is also in the process of developing a training curriculum to help first responders in British Columbia identify trafficked persons with input from a multi-sectoral advisory committee, including representation from the RCMP's National Human Trafficking Coordination Centre

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[46] Confirmed by Matthew Taylor, Canada Department of Justice on 15 January 2010.

[47] See US Department of State, *Trafficking in Persons Report*, *supra* note 2 at 78 (noting that 1,204 human trafficking investigations were conducted in Belgium in 2007); See also Benjamin Perrin, *Journey of Injustice: Canada's Underground World of Human Trafficking*, [forthcoming in Fall 2010] c. 8 "Global best practices in combating human trafficking."

[48] Information provided by Marie-Claude Arsenault, *supra* note 35.

[49] Information provided by Derrick Deans, *supra* note 15.

[50] Interviews of numerous interviewees identified in Appendix B.

[51] RCMP, *Operational Police Officer's Handbook on Human Trafficking* (Ottawa: RCMP, 2010), at 21-22. See also Yvon Dandurand *et al.*, *Human Trafficking Reference Guide for Canadian Law Enforcement* (Abbotsford BC: University of the Fraser Valley Press, 2005) at 16-19.

[52] Interviews of Jocelyn Coupal, Crown Counsel (January 2010); Meghan Klaver, *supra* note 35.

[53] Interviews of Matthew Taylor, *supra* note 13; Meghan Klaver *ibid.*

[54] United Nations Office on Drugs and Crime, *Human Trafficking Indicators* (UNODC) online: United Nations Office on Drugs and Crime http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf. See UNODC, *Human Trafficking Indicators.*

[55] International Labour Office, *Operational indicators of trafficking in human beings* (Geneva: ILO, March 2009, revised September 2009), online: International Labour Office http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf. The ILO employed Delphi methodology based on consensus from a wide group of anti-trafficking experts from the 27 EU member states, including police, government, academic and research institutes, NGOs, international organizations, labour inspectorates, trade unions and judiciaries. See ILO, *Operational indicators of trafficking in human beings* and RCMP, Human Trafficking Indicators from RCMP, *Operational Police Officer's Handbook on Human Trafficking* (Ottawa: RCMP, 2010).

as well as provincial associations and ministries, federal departments, NGOs, and international organizations.[56]

1.3.1.3 Labour trafficking: the great unknown

The dearth of reliable evidence about trafficking is particularly acute with respect to labour trafficking. There are no thorough reports on labour trafficking in Canada and very few interviewees could provide concrete information on what Canada's labour trafficking problems might be. This gap in information is concerning given that statistics from the US suggest that labour trafficking is at least as prevalent, if not more prevalent than sex trafficking there.[57] A number of interviewees suggested that sectors known to be prone to trafficking generally, such as food services, escort services and strip clubs should be investigated.[58] Others suggested that certain businesses, such as adoption agencies and immigration consultants, should be investigated. Still others suggest that Canadian work programs targeted for relatively vulnerable migrant workers should be evaluated for conditions that could support trafficking, including the Seasonal Agricultural Worker Program, the Live-in Caregiver Program,[59] and the Pilot Project for Occupations Requiring Lower Levels of Formal Training (the "Low-Skill Pilot Project").[60]

1.3.1.4 Victim information from neighboring jurisdictions

While human trafficking victim statistics may not yet be available in many countries, including Canada, it can be instructive to look to other jurisdictions with a history of serving trafficking victims that have compiled information about these victims. In New York City, one of the world's major destination points for trafficked persons, one of the U.S.'s largest victim services providers for international human trafficking victims, Safe Horizon, has helped 380 victims of human trafficking since 2001.[61] Certain statistics from Safe Horizon are helpful as points of reference:

- While law enforcement referred 44% of the total victims to Safe Horizon, NGOs referred 62% of the labour trafficking cases and 31% of the sex trafficking victims.[62]
- Government agencies were the least likely institutional group to find victims, referring only 8% of the total cases, equivalent with the referral rate from lawyers.
- Of the 380 victims served by Safe Horizon since 2001, the majority was female (79%) and young (41% were between the ages of 20 and 29 and 18% were under the age of 20).

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[56] Interviews of Robin Pike *supra* note 30; Rosalind Currie, Director, OCTIP (29 January 2010).

[57] Interview of Jennifer Dreher *supra* note 41; CAST LA, *A Serious Problem: Around the World and in the USA*, online: CAST LA http://www.castla.org/key-stats.

[58] For example, 75% of exotic dancers in Toronto strip clubs are foreign women, many who are believed to be trafficked. See Natalya Timoshkina and Lynn McDonald, *Building partnerships for service provision to migrant sex workers* (Toronto: The Wellesley Institute, 2009) at 19, online: Wellesley Institute http://wellesleyinstitute.com/files/Building%20Partnerships%20for%20Service%20Provision%20to%20Migrant%20Sex%20Workers.pdf.

[59] See J. Oxman-Martinez, J. Hanley and L. Cheung, "Another look at the Live-in Caregivers Program" (2004) Immigration and Metropolis at 24-26.

[60] Interview of Antonela Arhin, Executive Officer, Centre for Diaspora and Transnational Studies, University of Toronto (25 February 2010).

[61] Safe Horizon, *Safe Horizon Trafficking information sheet* (provided by Jennifer Dreher, *supra* note 41, to the author on March 11, 2010), [unpublished]. All of Safe Horizon's victims meet the US federal definition of a trafficked person under the US Trafficking Victim Protection Act.

[62] Within law enforcement referrals, 56% came from the US Immigration and Customs agency, 19% from federal prosecutors, 6% from the Federal Bureau of Investigations, 5% from the US Department of Justice, and 5% from local law enforcement.

- Most of their victims were trafficked for labour (46%) rather than sexual exploitation (36%).
- Over half of the victims (57%) came from within the Americas.

Compiling similar data from victim services providers throughout Canada, starting with larger cities, could help clarify the nature and extent of human trafficking in Canada and help the government craft responses that are tailored to the problem. An approach to gathering more data will be discussed below in promising practice one. Nonetheless, in the section that follows, the report highlights the principal determinants of human trafficking that inform how promising practices should be assessed.

1.3.2 Vulnerabilities correlated with human trafficking

Across societies, victims of trafficking hold one characteristic in common: they overwhelmingly come from the most vulnerable segments of society. A recent UN human trafficking report defines vulnerability in this context to mean, "a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factions that create the context for their communities."[63] A 2008 UN global study found that individuals most vulnerable to trafficking tend to be:

- young
- female
- poor
- socially and/or cultural excluded
- undereducated
- coming from dysfunctional families and/or institutions, and
- desiring a better life but facing limited economic opportunities[64]

In the case of victims trafficked into Canada from other countries, vulnerability can also be created by:

- politically unstable environments
- social, cultural and legal frameworks that reinforce power imbalance, such as discriminatory labour practices, patriarchal social structures, precedents of bonded labour, etc.
- movement under duress, e.g. refugees, internally displaced people, and asylum seekers[65]

Canada's trafficking victims are similarly thought to be the country's most vulnerable people.[66] In Winnipeg, for example, well over 70% of those considered to be sex trafficking victims are Aboriginal

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[63] Michèle A. Clark, "Vulnerability, prevention and human trafficking: the need for a new paradigm" in United Nations Global Initiative to Fight Human Trafficking, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (New York: UNODC, 2008) at 69.

[64] *Ibid.* at 71-75. See also Polaris Project, *Polaris Master Training*, slide 20, online: Polaris Project http://www.childtrafficking.com/Docs/polaris_project_train_public_0408.pps.

[65] *Ibid.*

[66] Those providing victims services in Canada confirm this finding. For example, one social worker with 25 years of experience providing victim services to women attempting to exit prostitution observed that while the victims may vary in ethnicity, depending on the region in Canada, their unifying characteristic is that they are from underprivileged backgrounds with high rates of childhood violence and abuse. Interview of Jane Runner, Program Manager of New Direction's Training and Employment Resources for Females (TERF) program, Winnipeg, Manitoba (10 March 2010).

and/or Métis, as discussed below in promising practice five.[67] A transition program for victims of commercial sexual exploitation of children in Winnipeg likewise reports that over 72% of their victims have been in the Child and Family Services system, some with as many as 67 placements.[68]

1.3.3 The demand and profit driving trafficking

While vulnerability factors help identify populations more vulnerable to being trafficked, vulnerability by itself does not cause trafficking. Trafficking is a criminal industry driven by the ability to make large profits selling human beings due to high demand with negligible risk of prosecution.[69] The global revenue is significant. Human trafficking is currently estimated to generate $32 billion USD a year, with profits per individual trafficked ranging from $13,000 to $67,200 per year.[70]

Another issue that policymakers should consider is the demand for the goods and services provided through trafficking in persons. The issue of demand is an important aspect of Article 9(5) of the Trafficking Protocol, as discussed above. As long as demand is unchecked and the risks for traffickers are low, these practices will persist regardless of other contributing factors. An effective strategy targeting demand can include both enforcement and prevention efforts that address the vulnerabilities listed above, as discussed below in promising practice two.

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[67] *Ibid.*

[68] Jane Runner, *Demographic Information* (Winnipeg: TERF, March 2010) [unpublished]; Interview of Jackie Anderson, Ma Mawi Chi Itata Centre, Winnipeg, Manitoba (9 March 2010); Interview of Diana Bussey *supra* note 30.

[69] See UN.GIFT, *Introduction to Human Trafficking supra* note 66 at 75; Polaris Project, *Understanding Human Trafficking* (Visited 13 March 2010), online: http://www.polarisproject.org/content/view/26/47/.

[70] Polaris Project, *Human Trafficking Statistics* (Visited 19 April 2010), online: Polaris Project http://nhtrc.polarisproject.org/materials/Human-Trafficking-Statistics.pdf.

2 Five promising practices

The five promising practices described below could be considered for implementation in Canada to help prevent human trafficking and identify and serve victims of human trafficking. Selection of these practices does not mean that these programs function perfectly and questions of federalism and other legal considerations, such as privacy laws, may need to be addressed before implementation of certain of the practices in Canada.

2.1 *Promising Practice One: Build a comprehensive anti-trafficking structure*

A national anti-trafficking structure is a promising practice that a number of states have adopted in response to human trafficking. This practice was selected because it provides a comprehensive and coordinated approach to address the gaps in information and responses to trafficking in Canada. It is reported to be working well for several European countries, such as Belgium, the Netherlands and Sweden.[71] International organizations including the Organization for Security and Cooperation in Europe ("OSCE"),[72] the European Union ("EU") and the United Nations ("UN") also support the development of national anti-trafficking structures.[73] Moreover, the cohesion that a national anti-trafficking structure seeks to achieve might be useful in addressing the diversity of approaches to trafficking in Canada identified in the previous section.

Three important components for a comprehensive national anti-trafficking structure are:

(1) a national action plan
(2) a national rapporteur and
(3) a national referral mechanism.[74]

While these components would need to be adapted to account for Canada's federal system, they would provide a comprehensive strategy and tools for:

- understanding the country's trafficking problem
- identifying victims
- developing informed policies
- organizing government action and, ultimately
- delivering coordinated services to victims.

2.1.1 National Action Plan

A National Action Plan ("NAP") assists a country to articulate a coherent, cohesive and comprehensive strategic and operational plan to counter human trafficking. Creating the plan helps foster

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[71] See discussions of these countries' efforts following.

[72] The OSCE, founded in 1975, is the world's largest regional security organization, currently with 56 member states. Canada has been a member of the OSCE since its inception.

[73] See e.g. OSCE Office of the Special Representative and Coordinator for Combatting Trafficking in Human Beings, *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms* (Vienna: OSCE, 2008). See also EC, *EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, [2005] O.J. C 311/01 at 11; UNODC, *Global Initiative, supra* note 2 at 5.

[74] Not all countries have adopted all three components.

government ownership of the issue and can create sustainability for structures as long as adequate funding is allocated. For a NAP to be an effective tool, experts recommend that it outline lines of coordination and cooperation among different levels of government, delegate responsibilities between agencies and contain a budget, timelines and deadlines.[75] The OSCE recommends that the NAP should clearly designate where funding support will come from for each element of the plan.[76] Human trafficking experts also encourage states to commission a self-assessment report at periodic intervals to be conducted by an entity qualified to carry out an evaluative review, such as a National Rapporteur or equivalent mechanism.[77] The OSCE and international trafficking experts further recommend that these assessments be presented to Parliament to review and made available to the public.[78]

While most action plans profess to take a comprehensive approach to addressing all forms of trafficking, it is rare to find a NAP with a systematic focus that includes labour trafficking. As an example of one country that belies this trend, the UK's Action Plan on Tackling Human Trafficking, launched in March 2007, balances both sex and labour trafficking.[79] Some of the best examples of action plans with well-developed labour trafficking components come from Latin America. Brazil's NAP includes prevention and reintegration measures, such as the right to identity papers, legal assistance, social benefits and vocational training for workers released from forced labour. In addition, Brazil's plan creates an innovative Mobile Inspection Unit that travels throughout the country to investigate allegations of forced labour.[80] In another example worth noting, Ukraine's Action Plan features key roles for its Public Employment Service and Ministry of Labour, which carry out the action plan's prevention components, such as verifying the legitimacy of jobs offered in the modeling, tourism and entertainment businesses, licensing employment agencies who recruit for employment abroad and inspecting these agencies for compliance.[81]

As a general rule, NAPs come in either narrative or chart-based form. The narrative form reads like a report, usually describing the international anti-trafficking framework and discussing the government response. The chart-based NAPs include columns identifying responsible actors, areas of responsibility, timeframes and funding sources. The OSCE suggests that the best plans combine elements of each: charts are useful for showing lines of delegation and setting deadlines, while narratives better convey strategy. Some plans are relatively short and provide a general framework; for example, Denmark's NAP is 27 narrative pages. Others, such as the recent Irish NAP for 2009-2012, are functional planning tools that provide detailed explanations of the government's position and give tables of proposed actions, with timetables and a responsible party listed for each action.[82] While no format is necessarily superior, the federal, provincial and territorial governments could review these examples to determine which format best suits its objectives and intended outcomes. One interviewee who has helped establish NAPs in various countries recommends a particular aspect of New Zealand's NAP that distinguishes

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[75] Interview of Mike Dottridge (March 2010). See also OSCE, *Efforts to Combat Human Trafficking*, *supra* note 73 at 53.

[76] OSCE, *Efforts to Combat*, *ibid.* at 70.

[77] *Ibid.*

[78] *Ibid.* at 71; Mike Dottridge *supra* note 75; Interview of Phil Marshall, Research Communication Group (4 April 2010).

[79] Home Office and Scottish Executive, *UK Action Plan on Tackling Human Trafficking* (London, UK: Home Office, 2007) online: Home Office http://www.legislationline.org/download/action/download/id/1376/file/6d2ce043f0ae5e35a5587e4ed98e.pdf

[80] Interview of Julia Batho, Attorney, ILO (18 February 2010). See also International Labour Office, *The cost of coercion*, International Labour Conference 98th Session 2009 Report I(B) (2009) at 37-38,41.

[81] ILO, *Cost of coercion*, *ibid.* at 43.

[82] See "Table of Key Actions" in Department of Justice, Equality and Law Reform, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland – 2009-2012* (Dublin: Dept. of Justice, Equality and Law Reform, 2009) at 205.

interventions that are "business as usual" from those that are specific to the plan.[83]

The OSCE also urges that NAPs should be living, rather than static, documents, which should be updated periodically as a country's understanding of its human trafficking problem within its border grows and as the states' efforts progress. For example, the Czech Republic updates its NAP every two years on the basis of a government evaluation.[84] Adopting this ongoing process of renewal could allow a Canadian national plan to become more empirically and analytically rigorous, hence more useful.

The utility of a NAP is also dependent upon adequate funding. In response to an OSCE survey, countries report that one of the major challenges for implementing the NAP is lack of funding. Paradoxically, the OSCE reports that many countries that attempt to make human trafficking a "top government priority," do not allocate sufficient funds to enable meaningful responses.[85] Still, at least seven of twenty-five national action plans reviewed provide clear budgetary allocations with identified sources of funding.[86] In short, for an NAP to have an appreciable effect, funds would need to be allocated.

2.1.2 A National Rapporteur

A National Rapporteur is an individual mandated to report on the nature and extent of human trafficking and on the effects of the anti-trafficking policy pursued by the government. This section highlights the Dutch National Rapporteur because this position has been instrumental in helping the country better understand and respond to its human trafficking situation over the past decade. Many of the Dutch National Rapporteur's duties coincide with the existing need in Canada to gain more information on human trafficking within its borders.

A National Rapporteur based on the Dutch model would:

- compile and disseminate relevant human trafficking information to and from differing levels of government;
- produce publicly available information to assist in designing policies and services tailored to the Canadian trafficking situation;
- make recommendations to federal, provincial and territorial governments regarding prevention of trafficking and protection of victims;
- have staff designated solely to human trafficking;
- serve an important public information and awareness function on victim protection and prevention activities throughout the country;
- be independent, transparent, and publicly accountable.

2.1.2.1 The Dutch National Rapporteur[87]

The Netherlands has had a National Rapporteur on Trafficking in Human Beings since 2000 ("Bureu Nationaal Rapporteur Mensenhandel" or "BNRM"). The Rapporteur is mandated to report on the nature and extent of human trafficking in the Netherlands, and on the effects of the anti-trafficking policy pursued by the Dutch government. Her reports contain policy recommendations aimed at improving the

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[83] Interview of Phil Marshall, *supra* note 78.
[84] OCSE, *Efforts to Combat Trafficking*, *supra* note 73 at 53.
[85] *Ibid.*
[86] ILO, *The cost of coercion*, *supra* note 80 at 43.
[87] Information in this section is based on interviews of Corinne Dettmeijer-Vermeulen, Dutch Rapporteur on Trafficking in Human Beings and Linda van Krimpen, Office of the Dutch Rapporteur on Trafficking in Human Beings (26 March 2010).

fight against human trafficking and set out information on relevant regulations and legislation, prevention strategies, existing human trafficking criminal investigations and prosecutions, and victims support issues. The current rapporteur, Corinne Dettmeijer-Vermeulen, was previously a judge and vice president of the district court in The Hague and is assisted by six staff members.

The Dutch Rapporteur is independent from other agencies, which provides several advantages and is seen as the most important aspect of her position. She can place important issues regarding trafficking on the parliament's agenda to ensure that her concerns are discussed and responded to, make independent recommendations to the different groups working to fight trafficking and assist victims, and decide what kind of research her office will undertake. She reports annually to the Dutch government, who then responds to her report to Parliament. In compiling her reports, the Rapporteur has access to all criminal files held by police and judicial authorities. Because of her unfettered access, the Rapporteur functions as a true centre of knowledge and expertise. To promote transparency and information sharing, the reports of the Rapporteur are publicly available on the BNRM website.[88] The Rapporteur's office gathers information from various source, including:

- individuals;
- national organizations such as CoMensha, the Dutch National Referral Mechanism or "NRM," (discussed below);
- authorities involved in the prevention and combating of human trafficking, including law enforcement;
- trafficking victims' assistance organizations;
- international authorities and;
- other organizations working to combat human trafficking.

In the 2009 report, the Dutch Rapporteur made 48 recommendations and urged that prevention programs be the primary focus in the fight against human trafficking. The reports themselves are a wealth of information about the national trafficking situation and give a comprehensive view of all of the available information in the country. They typically include tables of the nationality of all registered victims and suspected traffickers in the country each year.[89] Although human trafficking has not declined after a decade of counter-trafficking programs in the Netherlands, this is thought to be due to increasing rates of trafficking worldwide. The Dutch National Rapporteur has made the problem of human trafficking more visible and ensures that it remains a priority for the Dutch government. The National Rapporteur system is reported to work very well and is held in high esteem by the Dutch government.[90]

The National Rapporteur is a promising practice for Canada as one of the chief functions of this position is to collect and analyze existing information, which could help fill the current gap in knowledge about Canada's human trafficking situation. In addition, the Rapporteur would help raise the profile of human trafficking and could offer recommendations to FPT governments regarding prevention of trafficking and protection of victims.[91] In the case of the federal government, these recommendations could be sent to the Federal Interdepartmental Working Group on Trafficking in Persons (IWGTIP),[92] the

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[88] See Dutch National Rapporteur on Trafficking in Human Beings, online: National Rapporteur http://english.bnrm.nl/

[89] See C.E. Dettmeijer-Vermeulen *et. al.*, *Trafficking in Human Beings, Seventh Report of the Dutch National Rapporteur* (Amsterdam: Dutch National Rapporteur on Trafficking in Human Beings, 2010).

[90] Interview of Linda van Krimpen, *supra* note 87.

[91] In 2007, the Standing Committee on the Status of Women recommended that a National Rapporteur be established to collect and analyze data on trafficking in persons and provide an annual report to Parliament. See Standing Committee on the Status of Women, *Outrage into action*, *supra* note 34.

[92] Department of Justice, *Trafficking in Persons*, *supra* note 17.

RCMP Human Trafficking National Coordination Centre, as well as the existing provincial structures and groups outlined above.[93]

As a Rapporteur's independence is key, a Canadian Rapporteur could be an independent officer of Parliament, as in the Dutch model.[94] This independence will serve to increase the Rapporteur's access to information from the provinces and territories, federal government and law enforcement. This access is important because to be effective, he/she would need significant cooperation from federal, provincial, and territorial jurisdictions.[95] The Rapporteur could potentially collaborate with the Canadian Center for Justice Statistics ("CCJS") of Statistics Canada on data collection. Such collaboration may depend on the results of CCJS's recent feasibility study on whether a national data collection framework could be developed to measure the nature and extent of human trafficking in Canada.

That said, a number of federalism considerations would still need to be explored. As noted above, Canada is a federalist state with constitutional responsibility divided between the federal government and the provincial and territorial governments. If a Canadian Rapporteur were established as an independent officer of Parliament, questions regarding his/her mandate would need to be examined in detail, including his/her relationship with the provinces and territories. Examples of FPT information-sharing systems within the criminal justice system do exist, however, such as the Child Exploitation Tracking System[96] or the Canadian Police Information Centre System. Similarly, the Transition Home Survey, a census survey of residential facilities for women, is an existing information-gathering model that could be explored in setting up a National Rapporteur.[97]

In addition, applicable privacy laws must be closely evaluated.[98] In order to be effective, the Rapporteur would need to collect existing and new information from various agencies, including law enforcement, federal, provincial, territorial and foreign governmental agencies, and NGOs.[99] Each of these groups is bound by laws regulating the privacy and security of the information they gather on individuals.[100] The collection of this data should be based upon previously concluded protocols that govern information flows between different agencies in accordance with individual rights and various legal requirements.[101] Negotiations with each of the agencies will be required to ensure legal compliance, and certain laws may need to be amended to provide for the ability to share information.[102] Provision of anonymous data, i.e. providing details of individual trafficking cases without attaching this information to a person's name, could be explored to as a way of addressing certain privacy concerns.

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[93] *Ibid.*
[94] Other countries, such as Sweden, house their National Rapporteur within a National Criminal Intelligence Service.
[95] As stated, a detailed consideration of Canadian federalism is outside the terms of reference for this report.
[96] See RCMP, *Child Exploitation Tracking System* (Updated 11 November, 2008), online: http://www.rcmp-grc.gc.ca/ncecc-cncee/cets-eng.htm.
[97] Statistics Canada, Transition Home Survey (Ottawa: Statistics Canada, 13 March 2009), online: Statistics Canada http://www.statcan.gc.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=3328&lang=en&db=imdb&adm=8&dis=2#2; Statistics Canada, Family Violence in Canada: A Statistical Profile (Ottawa: Statistics Canada, 2009) at 8, online: Statistics Canada http://www.statcan.gc.ca/pub/85-224-x/85-224-x2009000-eng.pdf. The Transition Home Survey (THS) was developed by Statistics Canada in 1991 under the federal government's Family Violence Initiative. Through consultation and cooperation with provinces, territories and service providers, information in this survey is gathered at a federal level detailing services offered as well as offering a "snap shot" of victim demographics.
[98] Yvon Dandurand, Senior Associate, International Centre for Criminal Law Reform & Criminal Justice Policy, *Notes for the Standing Committee on the Status of Women* (6 February 2007) [unpublished].
[99] *Ibid.*
[100] *Ibid.*
[101] *Ibid.*
[102] *Ibid.*

2.1.3 A National Referral Mechanism

International human trafficking experts recommend that in order to better serve the needs of trafficked victims, states should develop a referral system, called a National Referral Mechanism ("NRM"), for presumed trafficking victims.[103] A NRM is a coordinated strategic partnership between government and non-governmental organizations that links trafficking victims with services and ensures that victims' rights are protected. The NRM also assists in identifying victims, because of the cooperation between law enforcement and non-governmental organizations.

NRMs are considered a promising practice because they:

- provide a multidisciplinary and cross-sector approach to combating human trafficking
- build trust between the government sector and the NGO sector
- effectively connect victims to comprehensive services
- improve policy and procedures on a broad range of victim-related issues

An NRM can provide a multidisciplinary and cross-sector approach that best responds to human trafficking. This is important because human trafficking cuts across numerous fields, including internal security, economic and social policy, employment policy, migration, human rights, and crime-prevention policy. This establishment of national multidisciplinary teams also helps to find a balanced response that incorporates the victim-centered approach with the law-enforcement approach, where immigration and border control laws are given priority over victims' issues.

A meaningful cooperative relationship between government agencies and non-governmental victim services groups working to serve trafficking victims is reported to be one of the primary challenges in many jurisdictions. As discussed above, a primary reason for improving this relationship is the view of some experts that NGOs have proven to be more successful at finding trafficking victims than government or law enforcement.[104] In addition, NGO participation provides another means for ensuring that anti-trafficking measures are scrutinized to ensure compliance with human rights. A common concern among human rights experts is that access to victim services not be conditional upon cooperation with prosecutors as many victims seek to avoid all contact with officials, and will thus be reluctant to come forward if cooperation is required.

Not only do NRMs help ensure that the human rights of trafficked persons are respected, they are also an effective way to refer victims of trafficking to services. International research groups recommend that, in an NRM, civil society participation be compulsory given the "crucial role" played by NGOs in prevention and victim assistance.[105] To ensure that NGOs are part of the decision making process, these

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[103] Interview of Mike Dottridge, *supra* note 75. In 2008 the Council of Europe recommended that each of its member states establish national referral mechanisms for trafficked victims. See Council of Europe, *Recommendations on Identification*, *supra* note 44 at 2. See also Ruth Rosenberg, *Best practices for Programming to Protect and Assist Victims of Trafficking in Europe and Eurasia* (Washington DC: USAID, 2008) at 14.

[104] Interviews of Jonathan Martens, IOM (18 February 2010); Rachel Lloyd, Executive Director, and Julie Laurence, Clinical Director of GEMS, (23 February 2010); Jennifer Dreher, *supra* note 41; Andriana Ongoiba, *supra* note 41; Mary Pichette, Servants Anonymous Society, Surrey (5 May 2010) (reporting that 90% of their trafficking victim referrals from outside of Vancouver come through NGOs rather than government sources.) See also The International Centre for Women Rights Protection and Promotion, "La Strada", *Good Practices in Ensuring Adequate Assistance to all Categories of Trafficked* Persons (Moldova: La Strada, 2006) at 60 (stating 72% of victim referrals in Belarus to the IOM were from NGOs).

[105] International Centre for Migration Policy Development *et. al.*, *Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response* (Vienna: ICMPD, 2005) at 26, 61.

groups recommend that governments sign formal Memoranda of Understanding (MoU) to clearly set out the responsibilities and tasks of each actor.[106]

In terms of structure, a NRM usually includes a national coordinator, who is a senior government official, and a roundtable made up of senior representatives of government agencies and civil society who develop recommendations for national policy and procedures regarding victims of trafficking. NRMs also often include ad hoc working groups that deal with specific issues relating to victims. The mechanisms are likely to be most effective if they are founded on a formal co-operation agreement among the participants, such as a memorandum of understanding that sets out the specific role and duties of each participant. The mechanism should be formally adopted and uniform procedures should be developed for implementation by all agencies in a position to identify, protect or assist trafficked persons.[107]

To establish an NRM, the OSCE recommends the following steps:[108]

1) Conduct a country assessment to determine which agencies and civil society organizations are the key interviewees in anti-trafficking activities;

2) Work with identified groups;[109]

3) Determine how to ensure good co-operation between government agencies and civil society, as civil society organizations often identify victims as well as provide shelter and other services to the victims; and

4) Develop a system of internal monitoring, evaluation, and feedback.

In addition, the NRM should incorporate:

- Guidance on how to identify and treat trafficked persons while respecting their rights and giving them power over decisions that affect their lives.

- A system to refer trafficked persons to specialized agencies offering shelter and protection from physical and psychological harm, as well as support services. Such shelter entails medical, social, and psychological support; legal services; and assistance in acquiring identification documents, as well as the facilitation of voluntary repatriation or resettlement.

- The establishment of appropriate, officially binding mechanisms designed to harmonize victim assistance with investigative and prosecution efforts.

- An institutional anti-trafficking framework of multidisciplinary and cross-sector participation that enables an appropriate response to the complex nature of human

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[106] *Ibid.*

[107] The OSCE/ODIHR *Handbook on National Referral Mechanisms* is currently the most exhaustive document on referral mechanisms that provides useful guidelines for inter-institutional cooperation to ensure accurate identification and referral of victims of trafficking. See OSCE/ODIHR, *Handbook on National Referral Mechanisms* (Warsaw: ODIHR, 2005).

[108] General recommendations taken from the OSCE *Handbook*, *ibid.*

[109] As discussed below, in Canada the existing IWGTIP, the RCMP Human Trafficking National Coordination Centre and NGOs concerned with trafficking could help determine the appropriate NRM structure, membership, and program of action.

trafficking and allows its monitoring and evaluation.[110]

The Belgian and German NRMs provide good examples of well-functioning NRMs in practice.

2.1.3.1 Belgium's NRM

Belgium was one of the first to develop a national referral mechanism that is recommended by human trafficking experts.[111] The Belgian NRM is housed in the Ministry of Foreign Affairs. It receives guidance from an Interdepartmental Coordination Unit composed of representatives from the Ministries of Justice, the Interior, Employment and Social Security as well as from three non-governmental organizations and an independent coordination centre.[112] In 2003 Belgium officially authorized the three NGOs to provide services to victims of trafficking, which all follow a similar victim service approach. The independent centre coordinates all victim services for each victim following a human rights approach.[113]

Trafficking victims in Belgium are referred to the NGOs by law enforcement, inspection offices, social services, prosecutors, work complaint courts, lawyers, the Aliens Office, private individuals and occasionally individuals. If police suspect trafficking, they cannot prosecute the person for breach of migration laws – they are *required* to contact the Aliens' Office, which refers all victims to one of the designated human trafficking NGO service providers. A government solicitor, an Aliens' Office civil servant, or a social worker makes the trafficking determination. Specialized services for victims – psychological, medical, and administrative – take place either in a residential setting or on an outpatient basis. The NGOs have a formal role in the judicial system, and assist the victims through all legal procedures including the process to receive residence permits and work permits, which requires coordination between the police and the public prosecutor. The NGO can also assist the victim with a range of everyday administrative matters – from obtaining welfare assistance and travel passes. The NGOs works closely with local authorities that enter into contact with the victim on an everyday basis to create mutual trust and confidence, which supports the institutional NRM framework.[114]

In short, a plethora of different government agencies and NGOs in Belgium work together in a coordinated fashion to provide meaningful protections to trafficked people, with NGOs playing a central and equal role.

2.1.3.2 Germany's NRM[115]

Germany's referral system is more decentralized, given Germany's federal structure of 16 states, or "Länder". Germany's NRM is based on a collection of state cooperation/referral mechanisms that have been established between state police and human trafficking "counseling centers". There are forty specialized human trafficking counseling centers in the country, which are run by various groups who

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[110] *Ibid.*

[111] Interview of Mike Dottridge, *supra* note 75. See also Claudia Aradau, *Good practices in response to trafficking in human beings* (Copenhagen: Danish Red Cross, 2005) at 52, online: http://www.ungift.org/docs/ungift/pdf/knowledge/1088_drk_human_manual_web%20%282%29.pdf.

[112] See Belgian "Interdepartmental Coordination Unit Chart" (CBSS Task Force Against Trafficking in Human Beings/Swedish Institute (SI), 25 November 2009 - Brussels).

[113] Aradau, *supra*, note 111 at 53-58. For victim protection and support see Guidelines 6 and 8 in Office of the High Commissioner on Human Rights, *Recommended Principles on Human Rights and Human Trafficking*, UN ESC, 2002, Add. No. 1, UN Doc. E/2002/68 1 at 10.

[114] Aradau, *ibid.*

[115] Information in this section is based on interview of Baerbel Uhl, Chairperson, European Union Experts Group on Trafficking (11 May 2010), as well as on unpublished documents she provided.

have traditionally served vulnerable individuals working in the sex and unskilled labour industries. These groups include a wide-variety of NGOs, including sex workers rights organizations, migrant workers organizations and faith-based groups. The counseling centers enter into official cooperation agreements with the police, which detail key activities and the division of tasks related to victim assistance.[116] The centers have high rates of victim identification, which is attributed to the low threshold of proof required for presumed trafficking victims to attain services as well as the centers' familiarity with the landscape in which trafficking victims are found. German Federal Police ("BKA") statistics show that 482 human trafficking investigations involving 772 victims were concluded in 2008, with 43% of the investigations initiated by complaints filed by victims.[117] The BKA states that victim counseling and cooperation between law enforcement and the non-governmental counseling centers are "vitally important" in helping police identify trafficking victims and launch investigations.[118]

While each state convenes its own "roundtables," or working groups, which bring together the various governmental and non-governmental agencies working on human trafficking, there is also a Federal Working Group that meets four times a year to develop and coordinate human trafficking policy. The Federal Working Group is housed in the Federal Ministry of Family Affairs and is comprised of 17 different federal agencies, four representatives from each state, as well as representatives from the three NGO coalitions.[119] The Federal Working Group coordinates the state groups, identifies gaps that need attention,[120] and evaluates all state cooperation agreements. The Federal Working Group recently institutionalized access to compensation and remuneration for victims of trafficking, which is thought to increase victim identification, as victims are more likely to come forward when given concrete incentives to do so.

It is worth noting that those involved with establishing the German system report that it took eight to ten years before the system began to work effectively, in large part because it took this long to build trust between the police and the counseling centers. The German police, in particular, were initially reluctant to release undocumented migrants to trafficking counseling centers as they would then lose control over these individuals.

2.1.3.3 Building a Canadian NRM

After establishing a National Action Plan and a National Rapporteur, FPT governments may wish to consider establishing a NRM. Alternatively, jurisdiction by jurisdiction referral mechanisms could be established to connect victims with services.

The Federal Interdepartmental Working Group on Trafficking in Persons (IWGTIP), the RCMP's Human Trafficking National Coordination Centre, relevant NGOs and provincial anti-trafficking structures could be building blocks from which to develop a Canadian or a more decentralized NRM.

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[116] These MoUs were found in a government evaluation of the mechanism to be important to prevent victims from being instrumentalized by law enforcement. Federation-State Working Group on Trafficking in Women, *Cooperation concept for counseling services and the police concerning the protection of witnessing victims of traffic in human beings for the purpose of sexual exploitation.* [unpublished] (Provided to the author by Baerbel Heide Uhl on 9 April, 2010).

[117] Bundeskriminalamt, *Human Trafficking National Situation Report 2008* (press release summary) (Wiesbaden: Bundeskriminalamt, undated) at 5, 6, 8, 11.

[118] *Ibid.* at 12.

[119] For example one of the coalitions, KOK e.V., is comprised of 36 NGOs that are focused on fighting trafficking and violence against women.

[120] For example, when service providers reported that trafficking victims who were involved in court cases could not work during the Federal Working Group pulled together labor agencies to address the problem.

The German model of a federally coordinated system of state referral mechanisms may be of particular interest given Canada's federal structure. Under this more decentralized model, employees at existing shelters and transition houses could be trained to develop trafficking-specific services. British Columbia's OCTIP currently refers potential victims of human trafficking in Vancouver to NGO service providers offering housing, interpretation services, counseling, health care, and legal services.[121] These services are offered via contractual arrangements made with NGOs, the Ministry of Public Safety and the Solicitor General, although OCTIP intends to further formalize its provincial referral mechanism by signing MoUs with NGO service providers in the near future.[122] Incorporating NGOs on an equal footing and requiring police referrals to designated victims services organizations where trafficking is suspected are two clear lessons Canada could take from both Belgium's and Germany's NRM structures.

Establishment of a referral mechanism with federal involvement could pose challenges in the Canadian context as detailed in section 1.1.3 above. Cooperative agreements such as Canada's Social Union Framework Agreement ("SUFA") demonstrate the potential for national level coordination and cooperation, either by agreement or by legislation.[123] Further SUFA encompasses the principles of equality of service, coordination of service provision and specified federal funding for provincial programs, all of which are the core purposes of instituting a NRM. An agreement on Trafficking in Persons could be built on similar principles and could be part of a National Action Plan that includes provisions for a National Referral Mechanism, while allowing any province or territory to decide not to participate in the agreement. Another federal office with established provincial and territorial partners, which could be explored in devising a NRM structure is the Federal Ombudsman for Victims of Crime.[124]

2.2 *Promising Practice Two: Promote women's equality*

In addition to setting up national mechanisms, some governments focus on preventing human trafficking by designing policies that address its underlying causes. Promoting women's equality rights through a broad range of laws and policies that focus on reducing violence against women is one approach used to reduce human trafficking. While Canada has an existing framework in place to promote gender equality, this section reviews the Swedish model for possible additional solutions as to how this gender equality framework could be enhanced to respond to human trafficking.

2.2.1 The Nordic Model

Sweden's experience of promoting women's equality rights through a broad range of laws and policies that focus on reducing violence against women represents a unique model which has reportedly been relatively successful in reducing human trafficking over the past decade. In particular, the government prevention strategy for sex trafficking has focused on Sweden's prostitution laws as part of a

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[121] OCTIP plans to expand their referral network to Victoria, Nanaimo, Kelowna and Prince Rupert. Interview of Robin Pike, *supra* note 28.

[122] *Ibid.*

[123] The *Social Union Framework Agreement*, which was signed by all provinces and territories except Quebec in 1999 provides a framework for federal-provincial relations in stipulated areas. See Constitutional Law Group eds., *Canadian Constitutional Law*, 3rd ed. (Toronto: Edmond Montgomery Publications Ltd, 2003) at 441 and Social Union, News Release, "A Framework to Improve the Social Union for Canadians" (4 February 1999). The agreement sought to unify the quality of social programs delivered by provinces across Canada.

[124] The Federal Ombudsman for Victims of Crime's current mandate does not include human trafficking and unlike a rapporteur, an ombudsman may take concrete actions in individual cases. However, as an existing interjurisdictional structure focused on victims, this office may prove informative. See Federal Ombudsman for Victims of Crime, *Office of the Federal Ombudsman for Victims of Crime*, (updated 3 March 2010), online: Federal Ombudsman for Victims of Crime www.victimsfirst.gc.ca.

larger gender equality agenda. This section explores the extent to which this model may offer useful trafficking reduction insights.

The critical aspects of the Swedish model include:

- A comprehensive gender equality program;
- Increased and sustained resources for gender equality programs, including those focused on domestic violence;[125]
- Policies that focus on demand reduction, i.e. focus on buyers' actions rather than sellers';
- Laws that decriminalize selling sex and criminalize buying sex.

Sweden's approach to sex trafficking reduction is informed in part by its approach to prostitution. Sweden's approach to prostitution is different than many other countries because it clearly focuses on the user, or the "demand" to purchase people for sex acts. This differs from most anti-sex trafficking programs, which attempt to control the supply side of prostitution, i.e. the prostitutes. In other words, the Swedish model attempts to address the market for sexual services by targeting those who purchase sex services. Since its policy shift to focus on the demand side, the Swedish government has found that the demand to purchase sex acts and, as a result, the demand for sex trafficking has declined.[126]

Sweden views human trafficking as inextricably linked to gender inequality and violence against women.[127] In the late 1990s, the Swedish government developed robust programs to address these underlying causes, looking to criminal law to counteract many forms of violence against women. The reform package, referred to as "Kvinnofrid," or "Women's Peace," has three policy goals: to promote women's equality, to protect women from men's violence, and to build public support for the view that prostitution is violence against women.[128] The reforms included five amendments in the criminal law related to violence against women between 1998 and 2005. In its Violence Against Women Act the Swedish government and the Parliament define prostitution as a serious form of male violence against women and children that constitutes a significant social problem, harmful not only to the prostituted person, but also to society. One of the law's long-term goals is to abolish prostitution.[129] Sweden believes

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[125] One study examining the intersection between trafficking in persons and domestic violence in Europe and Eurasia finds that domestic violence creates several points of vulnerability that may be exploited and result in human trafficking. See Stephen Warnath, *Examining the Intersection Between Trafficking in Persons and Domestic Violence* (Washington D.C.: USAID, 2007) at vi – viii. The study concludes, however, that more data is needed to be assured that domestic violence can be considered a significant cause of human trafficking.

[126] Swedish Minister for Gender Equality Affairs, online: Government Offices of Sweden, http://www.sweden.gov.se/sb/d/4096; Interview of Axel Peterson, Deputy Director, Division for Criminal Law, Swedish Ministry of Justice (4 May, 2010). See also Gunilla Ekberg, "The Swedish Law that Prohibits the Purchase of Sexual Services" (2004) 10:10 Violence Against Women 1199.

[127] Ekberg, *ibid.* See also International Centre for Migration Policy Development *et. al.*, *Regional Best Practice Guidelines, supra* note 105 at 43.

[128] The reforms were based on a Commission on Violence Against Women report entitled "Kvinnofrid". See Karen Leander, "Reflections on Sweden's Measures against Men's Violence against Women" (2005) 5:1 Social Policy and Society 117.

[129] Numerous evidence-based studies on prostitution have been reviewed. It is clear that many Canadian sex workers think that their lives would improve were prostitution decriminalized, see e.g. the sex workers' affidavit supporting their legal challenge to the Canadian Charter. *Downtown Eastside Sex Workers Untied Against Violence Society & Kiselback v. Attorney General*, 2008 BCSC 1726, 305 D.L.R. (4th) 713 (Affidavit, Plaintiff). The goal of preventing trafficking, however, necessitates that attention be placed on future generations. Further, as some reports show that 95% of Canadian women in prostitution wish to exit "the life" if comprehensive services are available to help the transition from prostitution by providing other alternatives, the current generation of prostitutes may also benefit if the demand for prostitution were reduced. See Melissa Farley ed., *Prostitution, Trafficking and Traumatic Stress* (Binghamton: Haworth Maltreatment and Trauma Press, 2003) at 51.

that gender equality will not only help address problems such as human trafficking, but will contribute to economic growth by promoting people's skills and creativity. Sweden's success over the past decade has encouraged Norway, Finland, and Iceland to follow suit with similar programs. It is worth noting that international studies report that these four countries hold the smallest equality gaps between men and women in the world, although it is unclear to what extent, if any, the above criminal law policies play in this regard.[130]

As part of this philosophy, the government is dramatically increasing resources for gender equality. In total, gender equality programs have been funded to the tune of SEK 2,275 million ($324 million CAD), not counting various tax deduction programs.[131] The current Swedish gender equality programming includes:

- a strategy for equality in the labour market;
- a program to boost women's entrepreneurship;
- a program to promote gender equality in schools and higher education;
- grants to gender equality initiatives at local and regional levels;
- women's health funding;
- a gender equality bonus in the parental insurance system; and
- tax deductions for household related services.

Despite the high price tag of these programs, the investment is cost effective as it is significantly less than the cost of violence against women in Swedish society. The Swedish government estimates the cost of violence against women to be SEK 3 billion a year ($427 million CAD) in direct and indirect costs, including medical care, judicial and social services costs and production losses. The gender equality programming thus results in a savings of $103 million a year.

Statistics demonstrating high rates of violence and past abuse reappear throughout studies of prostitution and militate in favor of supporting a demand reduction approach. For example, a 2004 study of 100 Canadian prostitutes showed: 1) 73% of women in prostitution in Canada were child victims of domestic violence 2) 84% were victims of childhood sexual abuse 3) 91% experienced physical violence on the job 4) 95% wanted to exit prostitution and 5) over half enter the sex trade in Canada under age 18, which means that a portion of the trade is based on the commercial sexual exploitation of children. Farley at 40, 43, 45. While this quantitative study has been criticized by some as containing sampling errors, these numbers were corroborated by internal statistics noted in interviews of Jane Runner, *supra* note 66, 68; Jackie Anderson, *supra* note 68; Julie Lawrence, *supra* note 43; Jennifer Dreher, *supra* note 41 and Andriana Ongoiba, *supra* note 41 with the exception that the average age of entry into prostitution for victims at both Ma Mawi (interview of Jackie Anderson) and GEMS (interview of Julie Lawrence), which are specifically for child victims, is 13.

[130] See World Economic Forum, Media Release, "Iceland leads Forum's Global Gender Gap Index 2009" (27 October 2009), online: World Economic Forum http://www.weforum.org/en/media/Latest%20Press%20Releases/PR_GGG09. Iceland, Finland, Norway and Sweden hold spots one to four respectively.

[131] For the 2007-2010 term, Sweden allocated SEK 400 million ($57 million CAD) per year, more than ten times higher than its previous term, to fund gender equality policy measures. In 2007 the government adopted an action plan to combat "men's violence against women, violence and oppression in the name of honour and violence in same-sex relations," and placed over SEK 900 ($128.2 million CAD) in 56 measures under this plan up to the end of 2010. In 2008, the Swedish government adopted an action plan for combating prostitution and human trafficking for sexual purposes and invested SEK 213 million ($30.3 million CAD) for the following 17 ½ months in 36 measures aimed at prevention, protection and support for those at risk, higher standards in the justice system, increased national and international cooperation and awareness raising. See Ministry of Integration and Gender Equality, Government Offices of Sweden, *The Swedish Government's gender equality policy* (Stockholm: Grafisk Service, August 2009).

2.2.1.1 The Legal Regime

The United Nations Office on Drugs and Crime ("UNODC") estimates that 79% of human trafficking worldwide is for sexual exploitation.[132] In recognition of this, the Swedish government and Parliament acknowledge that the demand for sex with women and children is an important root cause of human trafficking for sexual purposes. Accordingly, Sweden's "Sex Purchase Law" is based on the view that prostitution is violence against women.[133]

The Sex-Purchase Law, which entered into force in 1999, views women as victims of prostitution. Consequently, it decriminalizes *selling* sex and establishes programs to assist women in exiting prostitution. The *purchase* of sexual services, however, is criminalized, with penalties ranging from a fine to six months of imprisonment.[134] The law defines "sexual services" narrowly, thus not covering all of the sex industry.[135] There is also a range of prostitution offences, for those who facilitate prostitution, including pimping and profiting, which apply to a person who promotes or improperly exploits "casual sexual relations for payment," with a possibility of four years of imprisonment, or six years in "aggravated" procurement cases. Trafficking in persons for sexual exploitation was criminalized in 2002 and extended in 2004 to include domestic trafficking and other forms of exploitation, with penalties ranging from 2-10 years of imprisonment. The legislation was amended in 2005 to extend to cases where payment has been promised or made by someone else in order to capture third parties. According to opinion polls, 80% of the Swedish population supports the law and it is seen as a symbol of gender equality in Sweden.[136] Due to significant international interest in the legislation, Swedish Supreme Court Justice Anna Skarhed has been leading an investigation to review the law; the government expects to release this review at the end of June 2010.

The Swedish National Criminal Investigation Department (NCID), which is Sweden's National Rapporteur for trafficking in human beings, says that there are clear indications that the law has had direct and positive effects on trafficking in women for prostitution purposes to Sweden.[137] NCID has received information from other European national police forces that Sweden is no longer an attractive market for traffickers as there is no legal market for prostitution. Without a legal market, pimps and traffickers face increased risk factors to running their business. According to victim testimonies, pimps and traffickers understandably prefer countries with attractive operating conditions – where the buyers are not criminalized and where prostitution is either tolerated or legalized.[138]

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[132] United Nations Office on Drugs and Crime ("UNODC"), *Global Report on Trafficking in Persons*, (Vienna: UNODC and UN.GIFT, 2009) at 6.

[133] Lise Bergh, State Secretary for Gender Equality, Sweden, Address (Tackling Human Trafficking: Policy and Best Practice in Europe, Brussels, Belgium Conference, Brussels, 19 October 2005) [unpublished].See also Liz Kelley, Maddy Coy and Rebecca Davenport, "Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries" in *Tackling Demand for Prostitution Review*, (London: UK Home Office, 2009) at 31-32.

[134] *The Swedish Penal Code* Ds 1999:36, c. 6, s. 11. "A person who…obtains a casual sexual relation in exchange for payment shall be sentenced for the purchase of a sexual service to a fine or imprisonment for at most six months." This provision also applies to Swedish peacekeepers who purchase local women and children where they are stationed. Norway and Iceland adopted similar sex-purchase laws in 2009 and a similar law is under consideration in Denmark.

[135] Although not all instances of prostitution in Canada meet the current trafficking definition, some do. Given that the legal definition of trafficking includes recruiting a person, or exercising control or influence over the movements of a person, for the purposes of exploiting them or facilitating their exploitation, it stands to reason that some prostitution constitutes trafficking even if victims are not moved from one location to another.

[136] Council of Europe, *Note from the Presidency to the Multidisciplinary Group on Organized Crime: Action Plan on Trafficking in Human Beings*, 6282/1/07 Rev 1 (Brussels: EC, 25 April 2007), online: La Strada International http://www.lastradainternational.org/lsidocs/240%20EU_ActionPlan_Council_Doc.pdf..

[137] Ekberg, *supra* note 126.

[138] Ekberg, *supra* note 126 at 1201.

The law is not without its criticisms, however. Despite about 2,000 arrests as of July 2009, convictions typically result in minor fines and no one has ever been jailed, largely because of the low maximum penalties for the crime.[139] Such low penalties concern some who think rigorous enforcement with higher sentences would better achieve the laws goals. A Swedish inspector who has closed down several East European sex trafficking rings reports that higher sentences are required for the law to be a truly effective deterrent.[140] In addition, some commentators say that since the law came into force in 1999, there has been a decrease in other harm-reduction measures, such as deploying outreach workers in red-light areas, which should be re-implemented to further improve the situation for women who remain in prostitution. Others claim that, despite the statistics indicating success, the law has forced prostitution underground, thereby making it more dangerous. These views are unsubstantiated, however, and evidence-based studies in other countries have found that there is little difference in the level of violence experienced by prostitutes whether they solicit clients publicly or behind closed doors.[141]

The effective enforcement of laws is ultimately determined by the attitude of the leadership within local police forces as well as the individual police officers, prosecutors and judges. When Sweden's Sex Purchase law first came into force, these groups were very critical of the legislation, saying that it would be impossible to find evidence and prosecute cases.[142] By 2005, however, these groups changed their view and now support the law.[143] Recent studies support the view that shifting law enforcement's efforts to arresting pimps and johns is a necessarily preliminary step in shifting societal views from viewing prostitution as inevitable to viewing it as violence against women.[144]

2.2.2 Work to change public perceptions about prostitution and human trafficking

Changing public perceptions about prostitution is a further means of preventing trafficking by promoting women's rights. For example, the Division for Gender Equality at the Swedish Ministry of Industry, Employment and Communications regularly organizes seminars and study visits on Swedish policies and legislation concerning trafficking in human beings for members of parliament, government representatives, public authorities, journalists, NGOs and students.[145] In addition, the Division for Gender Equality supports social awareness by screening an anti-trafficking film in high schools and providing teachers and students with information about gender equality. The material covered by this information includes values and attitudes concerning women's and men's sexuality, men's violence against women and girls, pornography, prostitution, and human trafficking. In 2007, approximately 35,000 students in 90 municipalities saw the anti-trafficking film.[146]

The Swedish government also forms partnerships with NGOs and other governments to develop awareness and strategies to combat human trafficking for sexual purposes, previously working with the European Women's Lobby, the Coalition Against Trafficking in Women, Finland, Norway, Russia and

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[139] Tom Sullivan, "Sweden revisits prostitution law" *Christian Science Monitor* (30 June 2009).
[140] *Ibid.*
[141] *Bedford, Lebovitch and Scott v. Attorney General of Canada* 2009 ONSC 07-CV-329807PD1 (Affidavit evidence of Dr. Melissa Farley).
[142] Gunilla Ekberg, Testimony (Subcommittee on Solicitation Laws of the Standing Committee on Justice, Ottawa, 10 October 2005).
[143] *Ibid.*
[144] See e.g. Linda Williams and Mary Frederick, *Pathways into and out of commercial sexual victimization of children: Understanding and responding to sexually exploited teens* (Lowell MA: University of Massachusetts Lowell, 2009) at 66-67.
[145] Council of Europe, *Action Plan*, *supra* note 136 at 26.
[146] *Ibid.*

the Nordic Council of Ministers.[147] The projects have included developing measures to discourage Nordic men from buying and exploiting Russian women and girls as well as measures to enhance the situation of women and girls in northwestern Russia to strengthen their position in society. The focus of these programs follows the overarching philosophy that the focus should be on decreasing demand through strict penalties and empowering the vulnerable who in all but very rare cases do not want to be a part of the sex business.

2.2.2.1 The Nordic model's relevance to Canada

Sweden's approach to reducing trafficking through a broad-based and comprehensive women's equality scheme is consistent with Canada's constitutional guarantees of women's equality rights in the Canadian Charter of Rights and Freedoms[148] as well as anti-discrimination protections in the Canadian Human Rights Act[149] and provincial and territorial human rights regimes.[150] Canada currently considers gender equality to be a priority issue for Canada's foreign and domestic policies.[151] To take but two examples, Canada reports "extensive progress" on its implementation of gender-based analysis ("GBA") across governments and has also designated gender equality as a crosscutting theme for all international development cooperation programming.[152] Given Canada's federal structure, however, certain aspects of Sweden's gender equality program may not easily translate into the Canadian context. A more thorough exploration of constitutional issues deriving from Canada's federal structure would be required before deciding to implement certain of Sweden's programs. Some aspects of Sweden's experience, however, such as investing in gender equality programs and tailoring policies to reduce demand for the purchase of sex acts, appear to be particularly relevant and instructive in curbing sex trafficking.[153]

2.3 *Promising Practice Three: Enhance labour monitoring*

Every year, Canadian employers hire thousands of foreign workers to help address skill and labour shortages. Programs such as the Seasonal Agricultural Worker Program and the Live-in Caregiver

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[147] *Ibid.*

[148] See ss. 15 and 28, *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act 1982* (U.K.), 1982, s. 11.

[149] *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.

[150] See Canadian Human Rights Commission, *Resources – Links – Provincial and Territorial Human Rights Agencies* (updated: 16 September, 2009), online: Canadian Human Rights Commission http://www.chrc-ccdp.ca/links/default-en.asp#provincial.

[151] See e.g. Online: Status of Women Canada http://www.swc-cfc.gc.ca/index-eng.html; Foreign Affairs; International Trade Canada http://www.international.gc.ca/rights-droits/women-femmes/equality-egalite.aspx?lang=eng; Canadian International Development Agency http://www.acdi-cida.gc.ca/equality.

[152] See Canada's 2009 submission to the Human Rights Council: Canada, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/4/CAN/1* (Geneva: United Nations General Assembly, 5 January 2009); See also Canada, Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons: Chapter 1 Gender-based analysis* (Ottawa: Office of the Auditor General of Canada, 2009), online: Office of the Auditor General of Canada http://www.oag-bvg.gc.ca/internet/English/parl_oag_200905_01_e_32514.html#hd3d.; Canadian International Development Agency, *Equality Between Women and Men* (Updated: 3 December, 2009), online: Canadian International Development Agency http://www.acdi-cida.gc.ca/equality.

[153] Some demand reduction programs already exist in Canada, such as Prostitution Offender Programs, or "john schools," where those arrested on prostitution charges can attend an educational program on the bleak realities surrounding prostitution. In addition, the Canadian Religious Conference is carrying out an anti-trafficking campaign that seeks to reduce the demand for trafficking through education of youth, particularly adolescent boys. See Canadian Religious Conference, *Stop the demand for trafficking in women and children campaign* (2010) online: Canadian Religious Conference http://www.crc-canada.org/main.cfm?nID=513&nssid=113&nsid=1206.

Program are essential in providing access to qualified workers, and in the vast majority of cases no problems are reported. In situations where problems exist, they run along a continuum from general labour code violations such as employees not being paid the proper wages for working extra hours to various forms of abuse, potentially including labour trafficking.

Enhanced labour monitoring in certain sectors is a promising practice for dealing with labour trafficking. While there are no reliable statistics on the extent of labour trafficking in Canada, the ILO in its global human trafficking assessment suggests that Canada should place particular attention on labour conditions of foreign workers in domestic service and agriculture.[154] The US State Department confirms that some victims of labour trafficking in Canada "enter Canada legally, but are then subjected to forced labour in agriculture, sweatshops, or as domestic servants."[155] Further, if Canada's trafficking situation looks anything like the US situation, the largest and oldest US human trafficking programs have encountered more labour trafficking victims than sex trafficking victims in recent years.[156]

Enhanced oversight of labour sectors that employ migrant and foreign workers may be an effective method of curtailing human trafficking and exploitation within the labour force. The OSCE, IOM and ILO recommend the UK Gangmasters Licensing Authority (GLA) as an effective model for oversight of labour standards and reduction of irregular labour migration and labour trafficking.[157] This section, hence, reviews the GLA model as a promising practice considering its possible contribution to Canada's existing programs to monitor the agricultural sector and live-in domestic caregivers.

2.3.1 The UK's Gangmasters Licensing Authority[158]

The GLA regulates employment agencies and service providers in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. Its primary purpose is to ensure the welfare of labourers and the legality of operations within the designated industries. These goals are accomplished primarily by:

- making all labour standards publicly available;
- ensuring that employers are aware of these standards;
- conducting inspections, including surprise inspections, to ensure ongoing compliance;
- imposing penalties, including jail sentences for abusive practices.[159]

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[154] International Labour Office, *A global alliance against forced labour: Global Report under the Follow-up to the ILO declaration on Fundamental Principles and Rights at work* (Geneva: ILO, 2005) at 47. The ILO has found through empirical studies that aside from the sex industry, agriculture and construction are the most prone to human trafficking. *Ibid.* The US Department of Labor also places emphasis on investigating its migrant and seasonal agricultural worker program and for trafficking abuses and enforces its *Fair Labor Standards Act of 1938* and *Migrant and Seasonal Agricultural Worker Protection Act* without regard to whether an employee is documented or undocumented. See ILO, *The cost of coercion supra* note 80 at 45.

[155] US Dept. of State, *Trafficking in Persons Report*, *supra* note 2 at 98.

[156] CAST LA, the oldest human trafficking program in the United States, reports that 58% are labor trafficking victims and 42% of their clients are sex trafficking victims since 1998. Similarly, Safe Horizon in New York City reports that 46% of its clients are labour trafficking victims and 36% are sex trafficking victims since 2001. Information provided by Jennifer Dreher, *supra* note 41.

[157] Nilim Baruah and Ryszard Cholewinski, *Handbook on establishing effective labour migration policies in countries of origin and destination* (OCSE, IOM, ILO, 2006) at 164-167.

[158] Online: Gangmasters Licensing Authority (GLA) http://www.gla.gov.uk/index.asp?id=42 .

[159] GLA, *Mission Statement*, online: Gangmaster Licensing Authority http://www.gla.gov.uk/index.asp?id=1012760. All compliance initiatives fall under the *Gangmasters (licensing) Act* and Regulations, see GLA, *Legislation*, Online: Gangmasters Licensing Authority http://www.gla.gov.uk/index.asp?id=1012774.

The GLA is not limited to foreign workers or temporary workers; licenses are required for anyone supplying labour or using workers within the designated industries.[160] Licensees must provide employment contracts, employment records, pay records, and must ensure health and safety standards as well as lodging and travel arrangements where applicable.[161] Detailed standards regarding mistreatment, debt bondage, loans, wage amounts and withholding wages, holding personal documents, transportation, and criteria of adequate accommodation are provided to employers.[162] Employers who fail to comply lose their license. Maltreatment of workers and unfair loan practices, among other infractions will also result in immediate revocation of a license. Labour inspectors regularly conduct compliance inspections and license revocations are publicized online. Inspections have resulted in eighty-three license revocations since March 2007.[163]

Certain violations of the Gangmaster Act are criminal offenses. Most importantly, it is an offence under the Act to operate without a license, or to use an unlicensed gangmaster.[164] Maximum penalties are 10 years in prison plus a fine for operating without a license and six months in prison plus a fine for using an unlicensed gangmaster. Other offences include the holding and use of false documents and the obstruction of GLA officers in their investigation. In order to facilitate this type of accountability, GLA officers have the authority to have gangmasters produce and explain relevant documents, inspect documents and computers and make relevant copies, among other measures.[165] In addition, GLA officers are authorized to perform surprise raids on businesses suspected of abuse and pre-emptively revoke licenses before the picking season for a non-compliant agricultural licensee.[166] Operation Ajax, a program including unannounced inspections, has recently been expanded to permit 20 to 30 surprise raids throughout the UK where the GLA suspects abuse.[167]

When the GLA encounters suspected labour trafficking, it works with the UK National Referral Mechanism to ensure that victims are correctly identified and provided with necessary services. Through GLA inspection, the UK has also identified areas of continued non-compliance with labour standards, including: wages and taxation, health and safety requirements and contractual/recruitment procedures. Other areas of non-compliance relate to annual leave, complaints processes, hours worked, worker documentation, and the presence of illegal workers.[168] Notably, the lack of further inspection after an audit due to resource constraints has impacted the reliability of GLA licensee compliance measures.[169] Also, despite the significant success the GLA has had in requiring licensing and policing compliance, it is estimated that an average of 25% of labour in the five sectors it regulates remains unlicensed.[170] With these limitations in mind, it is still safe to conclude that this licensing regime offers one of the more promising solutions to labour trafficking.

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[160] GLA, *Which sectors are covered?*, online: Gangmasters Licensing Authority http://www.gla.gov.uk/index.asp?id=1013276.
[161] Gangmasters Licensing Authority, *Compliance Code of Practice* (Nottingham: GLA, June 2006).
[162] *Ibid.*
[163] GLA, *License revocation list*, (updated 29 April 2010), online: Gangmasters Licensing Authority http://www.gla.gov.uk/index.asp?id=1013368.
[164] GLA, *Offences*, online: Gangmasters Licensing Authority http://www.gla.gov.uk/index.asp?id=1012773.
[165] Gangmasters Licensing Authority, *Compliance Code of Practice*, *supra* note 161.
[166] GLA, *Operation Ajax*, online: Gangmasters Licensing Authority http://www.gla.gov.uk/index.asp?id=1013370.
[167] GLA, media release, "Pre-emptive strike ahead of weeklong operations in south-west" (24 February 2010), online: Gangmasters Licensing Authority http://www.gla.gov.uk/embedded_object.asp?id=1013646.
[168] Andrew Geddes, Sam Scott and Katrine Bang Nielsen, *Gangmasters Licensing Authority Evaluation Study* (Sheffield: University of Sheffield, August 2007) at 10.
[169] *Ibid.* at 11.
[170] Gangmasters Licensing Authority, *Annual Review 2008* (Nottingham: GLA, 2008).

2.3.2 Canada's Seasonal Agricultural Workers Program

Canada's Seasonal Agricultural Workers Program ("SAWP") program matches workers from Mexico and the Caribbean with Canadian farmers who need temporary support during planting and harvesting seasons where qualified Canadians or permanent residents are not available.[171] The SAWP program[172] bears some similarities to the GLA in that it targets a specific sector and guarantees minimum wage, work hours, work safety, personal document security and employment records.[173] At present, the SAWP operates in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island. There are key differences, however, in the methods of enforcement and foci of the two schemes. While the GLA requires all Gangmasters be licensed (thus covering the entire field in the targeted industries) the SAWP covers only temporary foreign workers.[174] This may provide opportunities for abuse and exploitation.

With regards to enforcement, the SAWP relies more heavily on employees disclosing abuse than on compliance inspection. Typically, SAWP schemes encourage employees to speak to a local employment standards office, embassy or consulate regarding concerns over work conditions rather than conducting proactive investigation of their own accord.[175] The Mexican government, for example, has representatives in its Canadian consulates in order to assist workers. This framework is not ideal from a trafficking-prevention perspective. An ILO study on labour trafficking in 2005 shows that victims are very reluctant to denounce forced labour practices and often have little incentive to cooperate with law enforcement agencies.[176] Thus, relying on employees to disclose abuse will do little to deter labour trafficking and other exploitative labour practices, although, to be clear, many exploitative labor practices will not constitute labor trafficking. Compliance initiatives such as the GLA's unannounced inspections might be considered to enhance the existing oversight mechanism in the SAWP framework.

Furthermore, the SAWPs enforcement regime does not appear to adequately address the realities of labour trafficking. While the SAWP program is, of course, subject to *Criminal Code* provisions, enforcement of SAWP violations is primarily governed by the *Immigration and Refugee Protections Act*, which tends to target workers rather than employers.[177] To the extent that the act also creates offences for employers, these appear to be under-utilized.[178] So while it is an offence under section 124 and 125 of the

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[171] Human Resources and Skills Development Canada, *Seasonal Agricultural Worker Program* (Updated 10 June 2009), online: Human Resources and Skills Development Canada (HRSDC). http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/sawp_tfw.shtml.

[172] Human Resources and Skills Development Canada, *Temporary Foreign Worker Program, Hiring Foreign Agricultural Workers in Canada* (Updated 20 January 2010), online: Human Resources and Skills Development Canada (HRSDC) http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp.shtml.

[173] Citizenship and Immigration Canada (CIC), *Temporary Foreign Workers-Your Rights and the Law* (Updated 09 December 2009) online: CIC http://www.cic.gc.ca/english/work/tfw-rights.asp. For BC requirements see also BC Worker's agreement: Agreement for the employment in Canada of Seasonal Agricultural Workers from Mexico in British Columbia for the year 2008, online: HRSDC http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/forms/2008BCSAWPcontract-e.pdf.

[174] CIC, *Temporary Foreign Workers, ibid.*

[175] *Ibid.*

[176] ILO, International Labour Conference, 93rd Session, *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005* Report 1(B) (2005) at 60.

[177] *Immigration and Refugee Protection Act*, S.C. 2001, c.27 [*IRPA*]. Most sections dealing with contraventions of the Act reference individuals living or working illegally in Canada. See also United Food and Commercial Workers [UFCW], "Temp Foreign Workers take the fall again for farmers and government" (23 Mar 2010), online: UFCW http://www.ufcw.ca/Default.aspx?SectionId=af80f8cf-ddd2-4b12-9f41-641ea94d4fa4&LanguageId=1&ItemId=228117ee-a1dd-4907-a1d7-047a17ed21ed.

[178] UFCW, "Temp foreign workers," *ibid.*

IRPA to employ a foreign national in an unauthorized capacity, this provision is reported to be policed in only a limited number of cases. As a consequence, the SAWP not only leaves already vulnerable migrant workers open to prosecution, it fails to create incentives for employers to comply with standards that might protect against labour trafficking.

Critiques of the SAWP program as it currently exists highlight some further differences between this program and the GLA. Under SAWP, migrants lack access to permanent resident status, increasing their vulnerability.[179] On the enforcement front, the ILO and the OSCE report that the GLA has a very good record of protecting victims.[180] Union representatives report that while significant numbers of foreign workers are arrested for violating SWAP, few employers are held accountable for their breaches of the act.[181] In addition, the UFCW claims that employer violations of pay rate standards and record keeping continue to be high, with one province's employer non-compliance rate in this regard reaching 74%.[182]

CIC reports that proposed changes to the *Immigration and Refugee Protection Regulations*[183] are intended to increase compliance rates among SAWP employers.[184] CIC also says that the proposed regulations will subject employers seeking authorization to hire migrant worker subject to a "more systematic and rigorous assessment of the genuineness of the job offer."[185] CIC further proposes that employers who do not provide the wages, working conditions or occupation offered to a migrant worker "could be ineligible to employ migrant workers for two years."[186] Finally, the proposed regulation changes "would also make it possible to prohibit employer access to the [SAWP] program where they have violated provincial laws including employment or labour standards."[187] In addition, CIC reports that the SAWP currently holds an annual stakeholders meeting to address concerns and develop policy and suggests that enhanced enforcement could be discussed and implemented through this process.

Until the proposed changes above enter into effect and their effectiveness is assessed, the issues outlined above remain. In the meantime, the federal government has asked employers using the SAWP to participate in a voluntary monitoring program of foreign workers.[188] An alternate approach may be to consider adopting an enhanced enforcement model like the GLA's, which is better tailored to the realities of labour trafficking and utilizes more rigorous enforcement mechanisms. Without enhanced enforcement mechanisms, trafficking in the agricultural sector may remain difficult to reach.[189]

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[179] Andrea Gálvez Gonzalez and Osiris Ramos Rodríguez, "Patriarchy and Exploitation in the Context of Globalization" (2006) 39:2 Labour, Capital and Soc. 126. See also UFCW, "Temp Foreign Workers," *ibid.*

[180] Interview of Caroline O'Reilly, Head, Special Action Programmer to Combat Forced Labour, ILO (18 February 2010); see OSCE, "Annex 3: Examples of Good Practice" in *A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region* (Vienna: OSCE, 2009) at 57.

[181] UFCW, "Temp Foreign Workers," *supra* note 178.

[182] See UFCW, "Alberta stats confirm evidence of foreign worker abuse" (18 Mar 2010), online: UFCW http://www.ufcw.ca/Default.aspx?SectionId=a180f8cf-ddd2-4b12-9f41-641ea94d4fa4&LanguageId=1&ItemId=b8d74e8a-78f6-4fea-971e-0dbad5cfc03c

[183] *Immigration and Refugee Protection Regulations* S.O.R./2002-227 [*IRPA*].

[184] Information provided by Derrick Deans, supra note 15. *See also* CIC, News Release, "Minister Kenney proposes improvements to the Temporary Foreign Worker Program" (9 October 2009), online: CIC http://www.cic.gc.ca/english//department/media/releases/2009/2009-10-09a.asp#tphp%20idtphp.

[185] Information provided by Derrick Deans, *ibid.*

[186] *Ibid.*

[187] *Ibid.*

[188] HRSDC, *Monitoring Initiative Fact Sheet – Temporary Foreign Worker Program* (Updated March 17, 2010), online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ercompreview/factsheet.shtml.

[189] One provincial initiative of note is Manitoba's *Worker Recruitment and Protection Act* which requires all employers hiring foreign workers to register with the Manitoba government and licenses all foreign worker recruitment. This provincial initiative may be a step towards greater compliance by employers. Other attempts to

2.3.3 Canada's Live-in Caregiver Program[190]

Domestic workers are another group at particular risk of exploitation and trafficking because of their isolation when living in private homes and their dislocation from family, friends and networks.[191] Canada has a Live-in Caregiver Program ("LCP") to help Canadians hire foreign workers to live and work in their homes to care for children, the elderly, or people with disabilities when qualified Canadians or permanent residents are not available.[192] The press and NGOs have criticized the LCP as creating vulnerable and potentially exploitative situations for foreign migrants.[193] GLA-style compliance mechanisms could be incorporated into the LCP to limit the susceptibility of domestic workers to being trafficked.

Allegations have surfaced that the LCP allows for abuse of migrant workers. Some migrant workers in the program claim to have experienced: underpayment, unreasonably long work hours, "ghost-employers," coercion by recruiting agencies to work illegally, effective detention by recruiting agencies in substandard living conditions, inappropriate work conditions, seizure of personal documents, and failure to provide pay slips, employment documents or loan documents.[194] One caregiver, for example, was awarded $10,000 in damages against a recruiter who failed to place her in the home for which she had a permit, allowed her to be housed in a room with eight other nannies, and encouraged her to work illegally.[195]

Legislators recently reformed the LCP in response to allegations of abuse of migrant workers. As of April 1, 2010, the LCP requires employers to cover all recruitment costs and provide, at no charge to the caregiver, health insurance until the caregiver becomes eligible for provincial health coverage, workplace insurance, and one-way transportation to the location of work in Canada. Employers and caregivers must now sign a mandatory employment contract outlining employer-paid benefits, wages rates and frequency of payment, duties, duration of employment, hours of work, overtime hours, details of accommodation, notice of resignation or termination of employment and other information.[196]

Some provinces have passed legislation to offer protection to temporary foreign workers, including those recruited under Canada's LCP. As examples, both Manitoba's *The Worker Recruitment*

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compel employer compliance have involved worker unionization, most notably through the United Food and Commercial Workers [UFCW]. See United Food and Commercial Workers Canada, *Home Page* (Updated 2010), *online*: UFCW Canada http://www.ufcw.ca. See also UFCW Canada, Media Release, "Seasonal Agricultural Workers at BC farm go union with UFCW Canada" (4 March 2010), online: UFCW Canada http://www.ufcw.ca/Default.aspx?SectionId=af80f8cf-ddd2-4b12-9f41-641ea94d4fa4&LanguageId=1&ItemId=dab072ea-d237-4bd4-bfa9-c9e5e862fc75.

[190] HRSDC, *Temporary Foreign Worker Program: Changes to the Live in Care-Giver Program* (Updated 27 April 2010), online: HRSDC http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/lcpnewchanges.shtml.

[191] ILO, *The cost of coercion, supra* note 80 at 29.

[192] Human Resources and Skills Development Canada, *What is the Live-in Caregiver Program?* (Updated 05 May 2009), online: Human Resources and Skills Development Canada (HRSDC). http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/lic_tfw.shtml.

[193] See e.g. "Live-in caregivers subject to abuse: critics" *CBC News* (23 September 2009) online: CBC News http://www.cbc.ca/canada/toronto/story/2009/09/23/caregiver-program.html.

[194] Dale Brazao, "Nanny sent to work as underpaid servant" (22 Sep 2008) *Toronto Star*, online: The Star http://www.thestar.com/news/gta/article/503452; Dale Brazao and Robert Cribb, "Nannies trapped in bogus jobs" (14 March 2009) *Toronto Star*, online: The Star http://www.parentcentral.ca/parent/article/602352.

[195] Dale Brazao, "Nanny wins landmark suit after Star investigation: Judge awards $10,000 after recruiter failed to get her a job" (25 Nov 2009) *Toronto Star*, online: The Star http://www.thestar.com/investigation/article/730445--nanny-wins-landmark-suit-after-star-investigation?bn=1.

[196] See HRSDC, *What is the Live-in Caregiver Program?*, *supra* note 192.

and Protection Act that came into force in April 2009 and Ontario's *Employment Protection for Foreign Nationals Act* implemented in March 2010 make it an offence to charge an employee a recruitment or placement fee for finding work.[197] Ontario's law also makes it an offence to confiscate personal documents. The maximum penalties for contravening these acts include substantial fines, and, under Ontario's law, may also include up to a year in jail.

Such provincial legislation, along with changes in the federal LCP, provides a better legal framework to protect vulnerable caregivers from potentially exploitive fees, which often give rise to human trafficking.[198] In a number of instances, intended recipients of live-in caregivers in Canada "release" their live-in caregiver upon their arrival in Canada and then charge the caregiver to be placed with another employer. The Toronto Star, for instance, completed a one-year investigation into domestic caregivers that found that only one of twenty-four caregivers interviewed was placed with the intended family. The legal prohibition against charging these fees should decrease the practice of releasing nannies upon their arrival into Canada for profit,[199] but there remains the need to police the use of "training fees" or fees for "orientation packages" as a way of avoiding this rule.[200] Closer monitoring of these factors is likely to reduce risk factors that lead to labour trafficking.

Despite the recent policy changes, critics of the LCP maintain that the combination of the mandatory live-in requirement, temporary immigration status, and employer-specific contracts under the LCP trap women – who are reported to be mostly Filipina – in low-paying jobs where they are vulnerable to abuse and exploitation.[201] International organizations working on anti-trafficking measures specifically recommend that migrant work programs be structured to provide flexibility to migrants in order to reduce their vulnerability by, for example, not requiring migrants' visas to be tied to one employer.[202] LCP critics further maintain that the current delayed access to permanent residency status ensures poor treatment of foreign domestic workers, limiting their social mobility and further marginalizing them.[203] The lack of mobility options may lead many caregivers not to come forward with allegations of abuse in order to protect their only source of income. As discussed earlier, vulnerability is a hallmark of all trafficked victims, and hence close attention should be paid to prevent such abuse from occurring.

CIC reports that April 2010 program changes are intended to make it easier for live-in caregivers to obtain permanent residence by reducing the work period requirement to 22 months (3900 hours) of full-time employment as a caregiver, subject to a policy regarding employer-specific contracts.[204] The time allowed to complete the work requirement has also been increased from three to four years to reduce

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[197] *The Worker Recruitment and Protection Act*, S.M., 2008, c. 23; *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)*, 2009, S.O. 2009, c. 32.

[198] Dale Brazao, *Nanny sent to work*, *supra* note 194. Catherine Manuel was forced to pay her recruiter a $4,500 fee despite the fact that her 'employer' was never found, she was sent to work for significantly less money as a maid in a commercial operation.

[199] Dale Brazao, "Nanny anti-exploitation law passes" (11 Dec 2009) *Toronto Star*, online: The Star http://www.thestar.com/news/canada/article/737520--nannies-anti-exploitation-law-passes.

[200] Dale Brazao, "Nannies win fee battle" (21 Oct 2009) *Toronto Star*, online: The Star http://www.thestar.com/news/investigations/article/713441--exploited-nannies-win-fee-battle.

[201] See e.g. National Alliance of Philippine Women in Canada, *Scrap Canada's Live-in Caregiver Program: End violence against Fillipino women*, (May 2009), online: National Alliance of Philippine Women in Canada http://kalayaancentre.net/pwcofbc/?p=210. CIC maintains that, in principle, employer-specific work permits facilitate employer monitoring and also reports that job mobility "has improved since faster work permit processing…was implemented in 2008." Information provided by Derrick Deans, *supra* note 15.

[202] Interviews of Jonathan Martens, *supra* note 104; Mariana Katzarova, Office of the High Commissioner for Human Rights (18 February 2010); Caroline O'Reilly, ILO (18 February 2010).

[203] See Joseph Gerard Cuenca, *Filipina live-in caregivers in Canada: Migrants rights and labour issues*, (L.L.M. Thesis University of British Columbia Faculty of Law, 1998) [unpublished].

[204] Information provided by Derrick Deans, *supra* note 15.

impediments to changing jobs. CIC also notes that some of the proposed changes to the SAWP will also apply to the LCP.[205] The proposed changes would make employers ineligible to hire a foreign worker for two years if they are found to provide "significantly different wages, working conditions or occupation [from] the job offer." The proposed regulations are said to also require employers to demonstrate that they can afford to pay the wages offered, provide adequate accommodation and have a genuine need for live-in care.[206]

Currently, however, the LCP does not have a broad compliance mechanism or even a voluntary reporting initiative, although efforts have been made to provide workers with information about their rights and to establish a reporting mechanism, such as Ontario's toll-free LCP hotline.[207] The LCP could be enhanced to require all caregiver-recruiting agencies be licensed, as is the case with the GLA model.[208] In addition, GLA-style compliance mechanisms could be incorporated into the LCP to ensure ongoing respect of workers' rights, thus limiting the susceptibility of live-in caregivers to being exploited or trafficked.[209]

2.4 *Promising Practice Four: Support effective non-governmental human trafficking victim service providers*

While the first three practices identified in this report address programs focused on preventing trafficking and addressing gaps in information to better understand trafficking, improving services for trafficked victims are crucial to provide immediate protection to trafficked victims. Supporting effective NGO service providers is critical both to assist with victim identification as well as provide successful victim-centered services to trafficked victims. Victim service providers in the US have documented that NGOs can be better than government at finding trafficked victims.[210] This section therefore begins by investigating certain trafficking NGOs' identification experiences. It then highlights two human trafficking victim service programs with innovative approaches and high rates of success at helping victims exit their trafficking situation and avoid being retrafficked.

2.4.1 Early identification of trafficking victims

Certain non-governmental organizations in the United States have experienced relative success in identifying trafficking victims.[211] This experience may be instructive for Canada, where victim identification has proven to be a challenge. In addition to the low numbers of prosecutions, some existing programs for trafficking victims in Canada have few – and in some cases no – victims using their services.[212] Identification is time-consuming, described by trafficking experts as "a process" that can take

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[205] *Ibid.*
[206] *Ibid.*
[207] Ontario Department of Labour, *Are you a Caregiver in the Federal Live-in Caregiver Program* (Updated 02 November 2009), online: Ontario Department of Labour http://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_fedcaregivers.php.
[208] Canadian Society of Immigration Consultants, *Bill to Protect Foreign Nationals a step in the Right Direction* (22 October 2009), online: Canadian Society of Immigration Consultants https://www.csic-scci.ca/ann/show.html/10184.
[209] Recruiters in Ontario were licensed until 2001 when Premiere Mike Harris deregulated the industry. Brazao, *Nannies win fee battle*, *supra* note 200.
[210] See discussion at 1.3.1.4.
[211] Some of these organizations include The Urban Justice Center, GEMS, and Safe Horizons in New York City and CAST LA in Los Angeles. See e.g. Interview with Rachel Lloyd, *supra* note 104.
[212] Servants Anonymous in Surrey, British Columbia, is an exception, and report that they assist approximately 50 sexually exploited females each year, many of whom they consider to be trafficked. Interview of Mary Pichette,

up to two months.[213] In order to make this determination, winning a victim's trust is one of the major initial hurdles. This can be difficult due to the brainwashing and threats made to the victims and his/her loved ones by the trafficker over the course of the exploitation.[214] As one social worker explained, "trafficking victims have been repeatedly lied to, often by those they love – usually family members or boyfriends – about what their future will be. Why would they believe a stranger is actually going to help them?"

Victims' mistrust of government is reported by many NGOs. A UN Special Rapporteur found that mistrust of the police, prosecutors and/or judiciary resulted in trafficking victims choosing not to come forward to government.[215] Indeed, internationally trafficked victims may come from countries where government agencies have high rates of corruption. In British Columbia and Quebec, NGOs report that internationally trafficked victims are reluctant to inform the government of their situation because of:

- Fear of being arrested and/or deported;
- Lack of trust as to how they will be treated;
- Fear of reprisals by traffickers against themselves or their loved ones.[216]

Two Canadian NGOs working with sex trafficking victims, expressed reluctance at involving government in their trafficking cases. They explained that, although they would like to provide trafficked victims with the best possible services, from a victim's perspective they are concerned with reports of:

- Citizenship and Immigration Canada's practice of informing law enforcement on details of individuals who have applied for a temporary residence permit;
- Pressure from law enforcement to prosecute, despite the official policy that trafficking victims can be granted a TRP without agreeing to testify;
- Information that border guards have previously deported suspected child trafficking victims without offering protection.
- Insufficient victim protection in Canada's anti-trafficking laws.[217]

Safe Horizon, a New York City NGO, is the largest existing victim services program for human trafficking in the United States.[218] The organization tracks all of their trafficking referrals and reports that NGOs find 62% of their labour trafficking victims and 31% of their sex trafficking victims. The Anti-Trafficking Program reports that labour trafficking victims are harder to identify than sex trafficking victims as many of the victims are working in private homes, often the homes of wealthy foreign residents, and are hidden from public view. Safe Horizons tries to access these victims not by direct outreach, but by training groups who are likely to come in contact with victims, such as health care providers, faith-

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supra note 104. BC's OCTIP also reports to having referred numerous victims of trafficking to victim services in British Columbia since 2008. Interview with Robin Pike, *supra* note 28.

[213] Interviews with victim service providers. See also Cathy Zimmermann et al, *Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe* (London: The London School of Hygiene and Tropical Medicine, 2006) at 6, 20 (concluding that trafficked victims are not in a position to make informed choices for some time, often several months, of escaping the control of traffickers).

[214] Interview of Andriana Ongoiba, *supra* note 41.

[215] Radhika Coomaraswamy, Comm'n on Hum Rts., *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, UN ESCOR, 53rd Sess., UN Doc E/CN.4/1997/47 (1997) § 4, paras. 213-15.

[216] Interviews with trafficking victim services providers.

[217] One NGO has proposed that the law be amended to provide for legal protection to victims. See Proposal for Legislative Amendment to Protect Trafficked People, Canadian Council for Refugees.

[218] Safe Horizon is funded by the Office for Victims of Crime, a US federal agency located within the Department of Justice, as well as by foundations, corporations and individuals. All information about Safe Horizon in this paragraph provided by Jennifer Dreher, *supra* note 41.

based communities, community organizations and immigration attorneys. While this outreach still cannot reach some of the very worst cases, this front-end training helps them to find at least 23 labour trafficking victims and 9 sex trafficking victims in the New York City area a year. As a point of comparison, the highest number of government referrals comes from the US Immigration and Customs Enforcement Agency, who find an average of 6 labour trafficking victims and 7 sex trafficking victims in New York City a year.

The anti-trafficking program of the Urban Justice Center's Sex Workers' Project, another New York City NGO, finds 75 of their 100 sex trafficking victims per year from referrals by prior trafficking victims and another 15 from grassroots outreach, often conducted by prior victims. Only 10 of 100 victims are referred by law enforcement.[219] Andrea Ritchie, Director of the Sex Workers Project, explains, "Anti-trafficking efforts should be community-based, led by people familiar with sex work and other sectors where there is vulnerability to trafficking, such as domestic work, agricultural labour, and service sectors, [or by] people who have experienced trafficking [victims], social service providers, and immigrants rights advocates."[220] According to one study and several interviewees, this approach has not only been shown to be more effective, but it also empowers victims rather than subjecting them to the trauma of raids, arrests, and detention, which is seen as the most common law enforcement response.[221]

Trafficking victims service providers who work with sexually exploited children in Canada appear to rely more on government and law enforcement referrals to identify trafficking victims. This may not be sufficient in areas where law enforcement runs a complaint–driven system that requires a specific official complaint in order to initiate an investigation of sexual exploitation in the absence of observation of an exploitative act.[222] The reality of such policies is that without an official complaint, "kids on the street, at the present time, are not a high priority."[223]

In short, supporting NGOs and enhancing their ability to cooperate with government, including as an equal partner in a National Referral Mechanism, is likely to increase Canada's identification of victims.

2.4.2 Effective NGO victim service programs

Two programs are highlighted below, given their success rates at rehabilitating trafficking victims. The first focuses on survivor leadership and mentoring, and the second on job training programs for trafficked victims.[224]

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[219] Interview of Andriana Ongoiba, *supra* note 41.

[220] Sex Workers Advocacy Network, Media Release, "Report finds that raids are not an effective tool against human trafficking" (29 January 2009).

[221] See Melissa Ditmore, *The Use of Raids to Fight Trafficking in Persons*, (New York: Sex Workers Project, 2009). A study of 46 sex trafficking victims "rescued" in raids concludes that vice raids by local law enforcement are an ineffective means of locating and identifying trafficked persons and are often accompanied by human rights violations of the trafficked person.

[222] Interviews with several Manitoba interviewees.

[223] Manitoba, Inquest of the Honourable Judge John Guy, *In the Matters of The Fatality Inquiries Act and Tracia Owen* (Winnipeg: Provincial Court of Manitoba, 11 January 2008).

[224] Servants Anonymous in Surrey, British Columbia, has been identified by OCTIP as another example of an effective human trafficking rehabilitation program. Two key aspects of this program are 1) a live-in director in the shelter and 2) a structured educational program in a "college-like setting" which runs from 9:00 to 5:00 pm, 5 days a week. Interview of Robin Pike, *supra* note 28 and Mary Pichette, *supra* note 104.

2.4.2.1 Survivor leadership and mentoring[225]

Another reason to support NGOs is that they often develop innovative victim services for trafficked individuals that yield high success rates. The Girls Educational and Mentoring Services, or GEMS, based in Harlem in New York City is the largest provider of services to commercially sexually exploited and domestically trafficked youth in the US, serving almost 280 girls or young women between the ages of 12-21 last year. The service's success rate is impressive: approximately 72-73% of those who use the GEMS services successfully exit the sex industry and are not retrafficked. Two crucial aspects differentiate GEMS from other trafficking victim services, which are cited as keys to its success: (1) its survivor leadership and (2) its unique mentoring program.

Survivor leadership has been identified as a good practice in sex trafficking victim services primarily because of high success rates, both in identifying and serving victims.[226] GEMS is survivor-led; the founder and executive director was sexually exploited as a teenager and many outreach workers and administrative support staff are trafficking survivors. GEMS has found that survivors need to be at the forefront of the anti-trafficking movement primarily because the voices and experiences of survivors are integral to the development and implementation of programs designed to serve them.[227] In addition, it has found that victims need to see others who have experienced and overcome the same challenges so that they can be empowered to make the transition "from victim to survivor to leader." At the same time, GEMS attempts to have a staff composition that is mixed with survivors and non-survivors so that trafficking doesn't become normalized within the organization's culture.

Survivor leadership has been very effective in the policy world as well, with compelling testimonies by GEMS survivors to lawmakers in New York and Washington helping to pass anti-trafficking laws. In 2008, New York became the first state in the US to pass legislation decriminalizing the commercial sex acts of children who are victims of sex trafficking. New York's Safe Harbor for Exploited Youth Act converts prostitution charges for children under 16 to a Persons In Need of Supervision case, thus shifting the focus from juvenile justice to child welfare. The Safe Harbor Act was in large part due to the efforts of the GEMS survivors.

GEMS's second key to success is its mentoring and empowerment model.[228] The services are geared towards empowering girls to develop their unique skills and talents in a "strengths-based" environment. Each youth is considered to have the potential to become a leader of some kind and the service helps girls develop leadership qualities best suited to her individual interests and personality.[229] A

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[225] Information in this section is based on: interviews of Rachel Lloyd, *supra* note 104; Julie Laurence, *supra* note 104 and testimony of Rachel Lloyd to the US Senate Judiciary Committee, Subcommittee on Human Rights and the Law, Hearing entitled *In Our Own Backyard: Child Prostitution and Sex Trafficking in the United States* (24 February 2010).

[226] Similarly, at the Urban Justice Center, prior victims refer 75 of their 100 sex trafficking victims per year. Information provided by Andriana Ongoiba, *supra* note 41. Certain police departments are also now hiring experiential women to help them with sex trafficking cases. For example, the Cook County Sheriff's Office in Chicago, Illinois – known as a law enforcement leader on domestic sex trafficking in the US – employs experiential women to assist with sex trafficking investigations. The RCMP employs a former trafficking victim to present victim identification tips to law enforcement in its nation-wide human trafficking workshops. Information provided by Marie-Claude Arsenault, *supra* note 35.

[227] Winnipeg's TERF and Ma Mawi Little Sisters programs, which are survivor-led, confirm that survivor leadership is one of the keys in providing services to trafficked victims.

[228] GEMS does not adhere to the "rescue model" of some victims service providers.

[229] Recent interviews of GEMS youth members allowed a research team to draw conclusions on what was required for GEMS members to successfully exit the commercial sex industry and avoid being retrafficked. The primary conclusion was that GEMS youth leadership programming was vital to the girls' growth and development given their previous feelings of hopelessness and disempowerment created by their trafficking.

preliminary internal study of GEMS's success found that the GEMS youth leadership programming was vital to the girls' growth and development.[230]

GEMS members – all prior sex trafficking victims, 70-90% with histories of childhood sexual abuse prior to their recruitment – have participated in a wide range of leadership activities with their mentors. They have, for example:

- Spoken on sex trafficking at national and local conferences;
- Testified at city council hearings and legislative briefings in Albany and Washington D.C.;
- Advocated against sex trafficking in the media;
- Organized and run summits on commercial sexual exploitation;
- Produced the first youth-produced documentary on commercial sexual exploitation, and;
- Provided education and intervention to at-risk girls.

2.4.2.2 *Jobs training programs for trafficked victims*

Another innovative but simple method of protecting victims of human trafficking is to provide vocational training to trafficked persons through specifically designed programs. Trafficked persons' fear of deportation from destination countries is a strong barrier to finding and assisting victims.[231] This perceived threat of deportation can create incentives for trafficked persons to avoid authorities in destination countries, and also to remain with traffickers in order to be 'protected' from deportation.[232] The economic circumstances of trafficked persons, who have usually left their home countries in order to escape extreme poverty and a lack of employment opportunities also compounds this dependence on traffickers.[233] Vocational training programs address both of these factors by addressing the immigration status of trafficked persons and their economic prospects.

The Italian experience with vocational training programs offers a model worth considering. The Italian NGO "On the Road" includes a job training program in its services to trafficking victims to help victims reintegrate into society through employment. On the Road reports that 90% of trafficked persons who have been assisted through their program have found employment and have become economically independent.[234]

The On the Road program is based on Article 18 of Italy's *Aliens Law*, which provides for renewable six-month residence permits for trafficked victims, which includes access to health, education and the labour market.[235] Trafficked persons with residence permits are assisted directly by On the Road through various methods, including counseling to address the psychological effects of prostitution and victimization, and also educational methods that emphasize both social inclusion and individual autonomy through vocational training. This combination of strong social support networks and the

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[230] Rachel Lloyd, *From Victim to Survivor, From Survivor to Leader: The importance of leadership programming and opportunities for commercially sexually exploited and trafficked young women and girls* (New York: GEMS, undated White Paper), online: GEMS http://www.gems-girls.org/WhitePaper.pdf.
[231] Timoshkina and McDonald, *Building partnerships for service provision, supra* note 58.
[232] *Ibid.*
[233] *Ibid.*
[234] Claudia Aradau, *Good Practices in Response to Trafficking in Human Beings: Cooperation between Civil Society and law Enforcement in Europe*, (Conpenhagen: Danish Red Cross, 2005) at 99, online: http://www.ungift.org/docs/ungift/pdf/knowledge/1088_drk_human_manual_web%20%282%29.pdf. See also Perrin, *supra* note 47.
[235] *Ibid.*

development of individual economic skills create options for trafficked persons that helps prevent them from becoming dependent on traffickers.[236]

On the Road develops an individualized approach to each trafficked person. This approach is developed collaboratively between members of the NGO and the trafficked person, and includes training, housing support, income assistance, legal assistance, language classes and medical care. In addition to these services, On the Road provides victims with a two to six month trainee program (the "Practical Training in Enterprise" model) to help the victim become autonomous through employment. The organization avoids employment sectors such as domestic work that may leave trafficked persons vulnerable to re-marginalization. Depending on the victim's skills, On the Road arranges formal employment agreements with one of 30 companies in various sectors willing to accept trainees. The NGO covers all costs during the trainee program including a salary, and employers commit to considering the possibility of hiring the trainee after the trainee period concludes.[237] As stated above, the vast majority gain full-time employment at the end of their trainee program, frequently with the same organization.

In Canada, a TRP is required for internationally trafficked victims to gain legal employment.[238] Through job training programs, these victims can be retrained during their period of temporary residence in order to gain the skills to become economically independent. Canadian TRPs can be extended at the discretion of CIC officials, and permanent residency can be granted to TRP holders after holding the TRP for a certain period of time.[239] Thus, vocational training programs for trafficked victims could help victims prepare for the social and economic obligations of permanent residency. Even where trafficked persons do not receive an extended residence permit or permanent residency in Canada, the skills gained through job training programs can be utilized in their home countries to create employment possibilities and thus reduce the likelihood of being re-trafficked.

2.5 *Promising Practice Five: Work with Aboriginal communities on human trafficking prevention*

Studies on human trafficking in Canada conclude that the majority of people trafficked within Canada are Aboriginal women and children who are victims of sex trafficking.[240] Many commentators concur that domestic trafficking in Canada has not received the attention it deserves.[241] As discussed above, a subset of instances of prostitution may fit the current trafficking definition, given the growing rates of commercial exploitation of children in Canada. In particular, Aboriginal girls appear increasingly vulnerable due to earlier recruitment into the sex industry, recruitment by gangs, "gang-girls," and family members, and very violent victimization in the sex industry.[242] It is important to work with Aboriginal leadership to identify the complex factors that contribute to the sexual exploitation of Aboriginal children,

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[236] *Ibid.*
[237] *Ibid.*
[238] See discussion of TRPs at 6.
[239] *Ibid.* Information also provided by Derrick Deans, *supra* note 15.
[240] Jacqueline Oxman-Martinez, Ph.D., Marie Lacroix Ph.D. and Jill Hanley, Ph.D., *Victims of trafficking in Persons: Perspectives from the Canadian Community Sector*, (Ottawa: Department of Justice, Research and Statistics Division, August 2005) at 33. See also Arupriya Sethi, "Domestic Sex Trafficking of Aboriginal Girls in Canada: Issues and Implications," (2007) 3:3 First Peoples Child and Family Rev. 57; Anette Sikka, *Trafficking of Aboriginal Women and Girls in Canada*, (Ottawa: Institute on Governance, Aboriginal Policy Research Series, May 2009). Numerous Canadian interviewees confirmed this conclusion.
[241] Sikka, *ibid.* at 22 cited to Sethi, *ibid.* at 57; Interviews of Canadian NGO representatives.
[242] See Minnesota Indian Women's Resource Center, *Shattered Hearts: The commercial sexual exploitation of American Indian Women and Girls in Minnesota* (Minneapolis: Minnesota Indian Women's Resource Center, 2009) at 38 (citing seven Canadian reports on sexually exploited youth).

the incidence of trafficking in First Nations communities and the possible solutions to the trafficking problem, including culturally specific ones. This section explores each of these factors further.

2.5.1 Aboriginal women and girls are vulnerable to being trafficked

Grand Chief Ron Evans of the Assembly of Manitoba Chiefs is leading the First Nations response in Manitoba to human trafficking of First Nations women and children, with a focus on youth and women in urban centres.[243] Youth awareness of human trafficking has been a central focus of the 2009 strategy as approximately 70-80% of the 400 children sexually exploited on the streets of Winnipeg each year are Aboriginal.[244] The Grand Chief has convened a working group, which includes three other First Nations chiefs and partners with social service agencies, police forces and political leaders, to develop a holistic strategy for First Nations communities, focusing on prevention.[245]

The Grand Chief believes that there is a lack of information and statistics on the magnitude of the trafficking problem in Canada. He acknowledges difficulties in knowing where to start, given the breakdown of healthy First Nations families including the impacts of the residential school history.[246] Statistics from Transition Education and Resources for Females (TERF), a Winnipeg transition program demonstrate that in its programs for sexually exploited youth:

- Over 70% are Aboriginal;
- 50% had family in residential school;
- 91.5% are runaways who first left home at an average age of 11.30;
- 78% were previously in the care of Child and Family Services;[247]
- The average grade level completed is 7.61.[248]

Although the precise numbers of Aboriginals trafficked is unknown, their vulnerability as a group in Canada has been documented in numerous studies.[249] In Winnipeg, for example, 70-80% of the children in one transition program from the sex industry are Aboriginal,[250] while only 13.6% of Manitobans are Aboriginal.[251] Other studies show a disproportionately high percentage of Aboriginals in

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[243] Assembly of Manitoba Chiefs, *General Chiefs Assembly and AFN Regional Chief Election: Summary Report* (Long Plane First Nation: AFN, 27-29 January 2009), online: Manitoba Chiefs http://www.manitobachiefs.com/media/conferences/AMC%20AGA%20Summary%20Report%20January%2027%20-%2029%202009/Conferece%20Summary%20Report%20Jan%2027%20to%2029%202009.pdf.

[244] Grand Chief Ron Evans, "Sex Slaves on Winnipeg Streets" *Winnipeg Free Press* (8 July 2009).

[245] A study that examined over 400 youth in the Winnipeg sex trade and concluded that the financial burden to the government - including the criminal justice system, social programs, and welfare provisions, far outstrip the costs of preventative programs, where government money would be much better spent. L. DeRiviere, "An Examination of the Fiscal Impact from Youth Involvement in the Sex Trade: The Case for Evaluating Priorities in Prevention" (2005) 31:2 Canadian Public Policy 181.

[246] The Grand Chief sees similarities between the denial that there is a human trafficking problem on reserves with the initial denial that there was a problem of abuse in residential schools.

[247] Jane Runner, *Demographic Information*, *supra* note 68.

[248] *Ibid.*

[249] Police estimates of how many of the estimated 600 sex trafficking victims in Canada are Aboriginal or Métis are reported to be inaccurate as police often do not record whether or not the victims of sex trafficking are Aboriginal or Métis. Amnesty International, *No More Stolen Sisters: The need for a comprehensive response to discrimination and violence against indigenous women in Canada*, (London: Amnesty International Publications, 2009) at 1.

[250] TERF, *Mentor and Youth Program Evaluation Reports* (Winnipeg: TERF, 2005).

[251] Bruce Hallett, *Aboriginal People in Manitoba* (Winnipeg: Service Canada and Manitoba Aboriginal Affairs Secretariat, 2005) at 13.

the Canadian sex trade. Fifty-two percent of 100 female prostitutes in Vancouver's Downtown Eastside in 2002 were Aboriginal, compared to 1.7-7% of Vancouver's population.[252]

Aboriginal populations are equally over-represented in other studies of trafficking in Canada. To cite but one example, recent Canadian reports suggests that Aboriginal girls are entering prostitution at younger ages. While the average age used to be 14, victims' service providers think the average age is younger, with safety patrols in Winnipeg reporting children as young as eight being approached on the street for the purpose of sexual exploitation.[253] Consequently, the Aboriginal Women's Action Network ("AWAN") opposes the legalization of prostitution for fear that it would push even younger Aboriginal girls into forced prostitution and further entrench those already in the industry.

Empirical studies of dynamics in gangs also reveal that female Aboriginal gang members frequently recruit girls for prostitution to increase their own status in the gang and that the fastest growing segments of "gang girls" are under 16 years old.[254] Recent studies of Native gangs from 2009 describe a rapid expansion of Native gangs in Canada.[255] Experts on Aboriginal gangs have suggested that the best way to prevent trafficking of Aboriginal women and girls is to prevent child sexual abuse and implement broad education programs to confront misogyny, sexism and the early sexualization of girls and to provide quality programs for abusers that are comprehensively implemented.[256] In addition to gang recruitment, family-based sex trafficking is common in some Aboriginal communities, with one study reporting that 25% of Aboriginal women in prostitution were from families involved in prostitution. Recruitment by friends is also reported to be common.

Women and girls, who make up 75-80% of Aboriginal youth in the Canadian sex trade report very violent victimization, including physical assaults and other forms of physical and sexual violence,[257] severe physical injuries (including stabbings, broken bones and spinal injuries),[258] and kidnappings.[259] In March 2010, the Native Women's Association of Canada ("NWAC") released an updated list of 580 Aboriginal women who have gone missing or been murdered in the past three decades, some thought to be victims of sex trafficking.[260] As a result of the studies cited above, numerous groups, both domestic

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[252] *Farley supra* note 129 at 249.

[253] Kelly Gorkoff and Jane Runner, eds., *Being Heard: the experiences of young women in prostitution* (Black Point NS: Fernwood Books Ltd, 2003).

[254] M. Nimmo, *The "Invisible" Gang Members: A Report on Female Gang Association in Winnipeg, Manitoba* (Winnipeg, MB: Canadian Centre for Policy Alternatives, 2001) cited to Sethi, *supra* note 240 at 64.

[255] See e.g. Christina Spencer, "Native gangs on the rise, says study" *Ottawa Sun* (11 March 2009).

[256] Mark Totten, "Preventing Aboriginal Youth Gang Involvement in Canada: a Gendered Approach" (Paper prepared for Aboriginal Policy Research Conference, Ottawa, 2009).

[257] 82% of women have suffered physical assaults by johns in prostitution; Melissa Farley and J. Lynne, "Prostitution of Aboriginal women: Sex inequality and the colonization of Canada's Aboriginal women" (2005) 6:1 Fourth World J. 21.

[258] 75% sustained severe physical injuries (including stabbings, broken bones and spinal injuries); *Ibid.*; S. Currie *et al.*, *Assessing the Violence Against Street Involved Women in the Downtown Eastside/Strathcona Community* (Vancouver: Downtown Eastside Youth Activities Society and Watari Research Society, Ministry of Women's Equality, 1996).;J. Lowman and L. Fraser, *Violence against persons who prostitute: The experience in British Columbia* (Ottawa: Department of Justice, 1996); C. Stark and R. Whisnant, *Not for sale: Feminists resisting prostitution and pornography* (Victoria AU: Spinifex Press, 2005). All cited to *Shattered Hearts supra* note 242 at 7.

[259] 72% of street level prostitutes have been kidnapped; Cler-Cunningham and C. Christenson, "Studying Violence to Stop It: Canadian research on violence against women in Vancouver's street level sex" (2001) 4 Research for Sex Work 25.

[260] See Native Women's Association of Canada, *Sisters in Spirit: 2010 Research Findings* (Ohsweken, ON: NWAC, 2010), online: http://www.nwac-hq.org/sites/default/files/imce/2010_NWAC_SIS_Report_EN_Lite.pdf. ; Interview of Mavis Erickson (13 April 2010), who said that while rumours abound that some of the Aboriginal women who

and international, have called upon Canada to bring those responsible for crimes against Aboriginal women to justice and to develop a meaningful, comprehensive and coordinated plan to ensure safety for Aboriginal women.[261]

2.5.2 The root causes are complex

Recent studies summarize the complex root causes of sex trafficking of Aboriginal girls in Canada, which include:

- Legacy of colonization and residential schools
- Lack of awareness, acknowledgment and understanding of sexual exploitation
- Violence
- Poverty
- Isolation and need for a sense of belonging
- Racism
- Substance abuse
- Increased gang activity
- Gaps in service provision
- Discriminatory policies and legislations[262]

Similarly, the Minnesota Indian Women's Resource Center conducted a thorough study of the sex trafficking of American Indian women and girls in Minnesota in 2009. In reviewing their empirical findings with 33 Native community leaders and Elders, the group used a "social ecology lens" to summarize the influences that contribute to Native American women and girls vulnerability to sex trafficking.[263] The group identified four layers of influences that, when combined together, resulted in Native American women and girls' extreme vulnerability to sex trafficking. The four layers, from external to internal, include: the influence of the majority society; neighborhood and community environments; the influence of family and friends; and the individual. The first three of these layers contains numerous factors contributing to Native girls' vulnerability, as follows:

1) Influence of the Majority Society:
    - Government actions: genocide, reservation system, urban relocation
    - Media glamorization of sexual exploitation/sex as a marketing tool
    - Emphasis on money as proof of success
    - Targeting of Native women for sexual exploitation
    - Unequal gendered consequences for roles in prostitution
    - Federal definitions of "deserving victims"

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disappeared from the "Highway of Tears" in British Columbia have been trafficked, a formal inquiry is needed to adequately investigate the link and draw conclusions.

[261] For example, the UN Committee on the Elimination of Discrimination Against Women has urged Canada to establish a comprehensive national plan of action to address the social and economic factors that lead to increased risk for Aboriginal and other minority women; Amnesty International, *supra* note 249 at 26; Justice for Missing and Murdered Indigenous Women, "Flesh trade targets natives: Young Aboriginal women used as a sex commodity in cities across Canada" *News* (August 27th, 2009), online: Justice for Missing and Murdered Indigenous Women http://www.missingjustice.ca/2009/08/flesh-trade-targets-natives-young-aboriginal-women-used-as-a-sex-commodity-in-cities-across-canada/.

[262] *Sethi supra* note 240. See also *Sikka supra* note 240.

[263] Social ecology looks at "people in their environment and the influence of that environment on human development and behavior." Minnesota Indian Women's Resource Center, *Shattered Hearts*, *supra* note 242 at 35, 106.

- Government priorities based on group size and influence
- Under-funded "safety net" systems
- Racism
- Socioeconomic inequality
- Government actions: boarding schools, Indian Adoption Project, sterilization

2) Neighborhood/Community Environment
   - Social isolation
   - Visible, active sex trade
   - The "don't talk" rule
   - Limited jobs, few options for education and career planning
   - Community normalization of violence
   - Gang activity
   - Crime-based underground economy

3) Family and Friends
   - Poverty
   - Physical/sexual abuse
   - Parents affected by generational trauma
   - Parents affected by FASD/mental illness
   - Prostitution and survival sex
   - Substance abuse

4) Individual
   - Cumulative effects[264]

2.5.3 Anti-trafficking ideas for Aboriginal communities

Because of the complexity of the trafficking situation for Aboriginal communities, any one anti-trafficking practice will be insufficient to solve the problem on its own. That said, certain programs focused on the issues raised above lend themselves to being adapted by Aboriginal communities to begin to address this serious problem.[265] In this section five programs/ideas are highlighted that either target vulnerabilities that are correlated with trafficking in Aboriginal communities, such as school drop out rates and the lack of economic opportunities, or provide culturally relevant victim services to Aboriginal victims of trafficking.

2.5.3.1 Keep Kids in School

Reduction of school drop out rates may be assisted by funding schools in Aboriginal communities that provide career pathways programs and work-based learning such as cooperative education, internships, apprenticeships, job shadowing, mentoring, and school-based enterprises. These types of programs, which have been shown to reduce dropout rates,[266] can also provide practical economic skills to children that may reduce their vulnerability to being trafficked.

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[264] *Ibid.*
[265] Jane Runner, *Demographic Information*, *supra* note 68.
[266] James Stone, "Keeping kids in school: the power of CTE" (2004) *Techniques*, online: Goliath http://goliath.ecnext.com/coms2/gi_0199-242694/Keeping-kids-in-school-the.html.

Culturally sensitive education may also reduce dropout rates in Aboriginal communities. For example, in Quebec the Cree Way Project, which incorporates the traditions and knowledge of the local community, parents, and Elders, has resulted in improved academic performance amongst schoolchildren and decreased dropout rates.[267] The Alaska Department of Education and Early Development as well as the Native Hawaiian Education council have recommended that Aboriginal knowledge be incorporated, through community involvement, in education within Aboriginal communities.[268] A report to the Prince George school district on Aboriginal public schooling found that:

> ... strong community-school connections establishes within children the assurance that their culture and cultural knowledge is important to the education and subsequently provides for a strong sense of identity within the children. This in turn will lead to higher self-esteem, lower dropout rates, and higher levels of academic achievement.[269]

In either Aboriginal schools or schools adapted to include culturally sensitive education practices, an anti-trafficking educational program could be implemented to educate youth on the reality of human trafficking and to provide specific tools for Aboriginal children to protect themselves from exploitation. Aside from educational programs that address trafficking directly, schooling within Aboriginal areas can also more completely integrate the specific cultural contexts of the community through programs developed by communities themselves. Involving the specific belief systems of the community as well as community Elders into school programs can connect schooling more closely to the experiences of community members and make education a more relevant and empowering experience.

2.5.3.2 Community Watch Groups

Available information indicates that Aboriginal women are frequently trafficked from rural communities to urban centres, with families and friends of these women losing the ability to obtain information on their locations and status.[270] Community watch groups in rural communities may address this situation by providing communication links between communities and urban trafficking destinations. These groups may be able to use their detailed knowledge of their communities to more easily identify traffickers who infiltrate communities and to become aware of circumstances within communities that may render women vulnerable to being trafficked – e.g. unemployment, domestic disputes or drug addiction.

Community watch groups could be given the contact information of support workers and authorities in order for them to respond rapidly if there is an imminent danger of trafficking within their community. Further, in circumstances when women have left communities and groups suspect that trafficking has occurred, they can use their contacts to provide specific information about these women to support centres in trafficking destinations.

Community watch group programs have been implemented in many regions where trafficking is occurring. One example is in Bangladesh, where a country-wide program, supported by USAID was formed to train local community leaders, local officials, and local police in methods to identify, report and

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[267] Paul Mitchel et al., *Why an Aboriginal Public School?: A Report to the Prince George School District No. 57 Aboriginal Education Board*, (Prince Rupert: School District 52, 2005) online: http://cstc.bc.ca/downloads/Why%20An%20Aboriginal%20Public%20School.pdf at 11. See also Alberta Education, "Promising Practices for Keeping Kids in School" (2008) 3 *Promising Practices for Keeping Kids in School* 1.
[268] Mitchel, *ibid.* at 11.
[269] *Ibid.* at 12.
[270] See e.g. Sethi, *supra* note 240 at 59.

prevent trafficking from occurring.[271] Although there may be stark differences with realities in Canada, the development of community watch groups warrants further research and debate.

2.5.3.3 Cultural Mediators

Another promising practice may be the use of Aboriginal outreach workers trained in human trafficking who can work as cultural mediators and who, through field and street work, could reach out to Aboriginal victims in order to raise awareness about human trafficking, and inform them of their rights and options for escape. By acting as cultural mediators, the outreach workers may be able to relate to and address the specific cultural considerations. It is important that the outreach workers are from the same cultural background – in this case, of Aboriginal origin – as the women they are assisting.

Cultural mediators have been utilized successfully in Italy by the Tampep NGO to reach Nigerian victims of trafficking.[272] Tampep has found that outreach workers of the same cultural background as the victims are able to more successfully form relationships of trust with victims, as well as to more easily address issues involving language barriers, and knowledge of victims' systems of belief.[273] Cultural mediators work in collaboration with social workers to provide direct support to the victim as they navigate the complex system of services and interact with a variety of service administrators and providers. The mediators help facilitate access to services, provide information on benefits and provide cultural sensitivity.

2.5.3.4 Survivor-Led Shelters and Transition Programs

"Honouring the Spirit of our Little Sisters," a community-based safe house for adolescent females in the Ma Mawi Chi Itata Centre in Winnipeg, Manitoba, opened in 2003 as part of the Manitoba strategy to end child sexual exploitation.[274] Little Sisters is for female and transgendered youth ages 13-17 who are currently subjected to and at risk for sexual exploitation. The program offers an open-door, 24 hour a day, seven day a week home, where programming focuses on the physical, emotional, mental and spiritual development of each resident. The founder, Jackie Anderson, explains "it's as close to a family as you can find…trust and love are at the core…because every adult in these young people's lives has abused them in some way."[275] The programs are designed to help youth build a strong foundation of self-worth through a process of self-discovery and self-esteem building. Youth admitted to the program have input into the planning, monitoring and evaluation goals set out at the time of admission. Most referrals are from Winnipeg Child and Family Services or the Mobile Crisis Unit, although community and self-referrals also possible. Further evaluation of the effectiveness of such aboriginal survivor-led shelters would assist in seeing whether these should be considered as promising practices.

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[271] USAID, *Trafficking in Persons: USAID's Response* (Washington: USAID, 2006), online: USAID http://pdf.usaid.gov/pdf_docs/PDACH052.pdf at 13.
[272] Aradau, *supra* note 111.
[273] *Ibid.*
[274] Information in this section provided by Jackie Anderson, Ma Mawi Chi Itata Centre (9 March 2010).
[275] Interview of Jackie Anderson, *ibid.*

2.5.3.5 Strengthening Native Culture: Nokomis Endaad ("Grandmothers House")

After years of development, researchers and victims' service providers for Native Americans in Minnesota have created a new model of service, named "Nokomis Endaad," or Grandmother's House. The service provides culturally intrinsic healing for American Indian women challenged by addiction, mental health, sexual trauma and cultural disorders. Given the complexity of Native youth vulnerability to trafficking, described above, the goal of the model is to heal native youth of trauma by re-centering Aboriginal values and cultural practices and rebuilding youth pride in their culture. The program is an "intensive outpatient co-occurring disorder treatment program,"[276] which was developed based on Native women's sharing circles, decades of experience at the Minnesota Indian Women's Resource Center dealing with historic trauma in native communities, and an extensive literature review, in particular on studies showing that most Native youth have coexisting drug and mental health disorders.[277]

Nokomis Endaad is focused on building cultural pride and is designed to bring women back to their traditional strength-based roles in Native communities. Various culturally specific therapies are incorporated into the model, which also is designed to meet Western best practice standards. For example, the service model contains:

- an Elder in residence
- extensive ceremonial practice
- equine facilitated learning/therapy, which has been shown to have very positive results for youth with mental or emotional disorders
- art therapy
- traditional food ways
- a parenting curriculum focused on fetal alcohol syndrome
- a chemical dependency program
- a mental health program, with a staff mental health therapist to respond to histories of violence and abuse
- a Native assessment tool that looks at trauma history and family responses

The service is currently too new to have reports evaluating its outcome, but a one-year review is planned in order to share results on this innovative program.

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[276] Interview of Suzanne Koepplinger (27 March, 2010).

[277] In Canada, studies have shown that 79% of women in prostitution (of any ethnicity) report three of four types of violence: 73% were child victims of domestic violence and 84% were victims of childhood sexual abuse. See Farley, *supra* note 129. Statistics among trafficked Aboriginal women of childhood violence and sexual abuse often exceed these numbers. See Runner, *supra* note 68. Drug abuse rates vary by drug, with alcohol (86.5%), marijuana (86.5) cocaine/crack (72.1%) and opiates (59.1%) topping the list of substances abused by youth transitioning from commercial child sex exploitation. *Ibid.*

3 Conclusion and recommendations

The FPT Forum of Status of Women Senior Officials requested this report to explore promising practices in response to human trafficking in Canada and to recommend strategies at the policy and the services level for preventing human trafficking and offering victim services. The review of publicly available reports and semi-structured interviews with key interviewees revealed the promising practices, explored above. This approach was adopted in light of the reality that empirical evidence comparing promising practices is very limited.

In light of our review, we offer several proposals for consideration:

1. Develop a system to collect reliable and evidence-based information about the incidence of human trafficking in Canada. In particular, this system could:

    - Help clarify who is a victim of human trafficking based on Canadian criminal law for use in information gathering;[278]
    - Gather information from a variety of sources, such as government, law enforcement, victims service providers, labour inspectors, etc. to identify human trafficking across various sectors;[279]
    - Provide a focal point to collect and analyze Canadian information about human trafficking, such as a National Rapporteur who has information-gathering and analysis responsibilities.[280]

2. Develop a comprehensive, coordinated approach to human trafficking. Such an approach could integrate promising practices that Canada has already implemented, such as the Temporary Residence Permit Program for trafficked victims.

    A coordinated approach could include:

    - A National Anti-trafficking plan to articulate a coherent, cohesive comprehensive strategic and operational plan to counter human trafficking;[281]
    - A National Rapporteur on Human Trafficking[282] to provide a focal point for the collection, analysis and policy-making on human trafficking, with responsibilities for outreach and public awareness, and
    - A National Referral Mechanism, to provide formal coordination of government, law enforcement, and service providers pursuant to memoranda of understanding.[283]

    These options for developing a comprehensive and coordinated approach to human trafficking have differing resource implications and would require further consideration as to their mandate, the degree of desired federal versus provincial government involvement, and their reporting obligations and governance structures. The limited scope of this report did not permit the exploration of these issues.

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[278] See discussion at 10-11.
[279] See discussion at 12.
[280] See discussion at 17-19.
[281] See discussion at 15-17.
[282] See discussion at 17-19.
[283] See discussion at 20-24.

3. Promote gender equality through programs and laws to reduce violence against women and children. This approach could include:

    - Continued or additional resources to gender equality programs, particularly those focusing on gender equality and raising public awareness of the societal impacts of violence against women;[284] and
    - Increased focus on reducing commercial sexual exploitation of women and children, particularly aboriginal children[285] through such means as laws that target the demand for sexual services, survivor-led victims organizations, and programs which empower and mentor victims of human trafficking.

4. Request relevant FPT mechanisms to further explore how the existing labour framework governing sectors that employ migrant and foreign workers could be enhanced through licensing, compliance and enforcement mechanisms to address human trafficking.[286]

5. Provide training on human trafficking victim identification to a broader range of federal, provincial, territorial and municipal officials and community service providers, including first responders, health care workers, faith-based communities and other community service organizations. Support victim services organizations that seek to reintegrate and provide vocational training for trafficked victims.[287]

6. Recognize the vulnerability of aboriginal people, particularly children and women, to trafficking as well as the complexity of contributing factors.[288] Consider continuing and enhancing programs which address these vulnerabilities, including:
    - Programs to reduce school drop-out rates, including culturally sensitive education programs, and programs to develop economic opportunities in Aboriginal communities;[289]
    - Programs to raise public awareness of human trafficking for Aboriginal leaders, government officials, and the public;[290]
    - Programs to support and strengthen aboriginal family and community networks, such as survivor-led shelters, transition programs and specialized services for aboriginal women and children vulnerable to trafficking.[291]

Many of the above proposals have policy, budgetary and implementation implications that require further study. These suggestions do, however, provide promising avenues to further explore Canadian needs and its international obligations with regards to the complex crime of human trafficking.

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[284] See discussion at 24-29.
[285] See discussion at 27-28, 38-40, 42-45, 47-48.
[286] See discussion at 30-36.
[287] See discussion at 37-41.
[288] See discussion at 44-45.
[289] See discussion at 46.
[290] See discussion at 46-47.
[291] See discussion at 47-48.

APPENDIX A

Glossary

ACT – The Action Coalition on Human Trafficking (Alberta)

AWAN – Aboriginal Women's Action Network

BNRM – Bureu Nationaal Rapporteur Mensenhandel (Dutch National Rapporteur on Human Trafficking)

CAST LA – Coalition to Abolish Slavery and Trafficking (Los Angeles NGO)

FPT – Federal/Provincial/Territorial

GBA – Gender Based Analysis

GEMS – Girls Educational & Mentoring Services (New York City NGO)

GLA – Gangmasters Licensing Authority (UK)

HTNCC – Human Trafficking National Coordination Centre

HTRT – Human Trafficking Response Team (Manitoba)

ICCLR – International Centre for Criminal Law Reform and Criminal Justice Policy

ILO – International Labour Organization

IOM – International Organization for Migration

IRPA – Immigration and Refugee Protections Act

IWGTIP – Interdepartmental Working Group on Trafficking in Persons

LCP – Live-in Caregivers' Programme (Canada)

NAP – National Action Plan

NGO – Non-governmental Organization

NRM – National Referral Mechanism

NWAC – Native Women's Association of Canada

ODIHR – Office for Democratic Institutions and Human Rights

OCTIP – Office to Combat Trafficking in Persons (British Columbia)

OSCE – Organization for Security and Co-operation in Europe

PT – Provincial/Territorial

RCMP – Royal Canadian Mounted Police

SAWP – Seasonal Agricultural Workers Programme (Canada)

TERF – Transition, Education and Resources for Females (An initiative developed by the New Directions NGO in Winnipeg, Manitoba.)

TRP – Temporary Resident Permit

UFCW – United Food and Commercial Workers

UN – United Nations

UN.GIFT – United Nations Global Initiative to Fight Human Trafficking

UNODC – United Nations Office on Drugs and Crime

USAID – United States Agency for International Development

APPENDIX B

List of Human Trafficking Interviewees

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Mavis Erickson
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Carrier Sekani Family Services
Prince George

Kathleen Hill
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Lee Lakeman
Vancouver Rape Relief and Women's Shelter
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Brian McConaghy
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Ian Mitchell
Coordinator, Prostitution Offender Program of BC
John Howard Society
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Katrina Pacey
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PIVOT Legal Society and PIVOT Legal LLP
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Robin Pike
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International Centre for Criminal Law Reform & Criminal Justice Policy
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Alberta:

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Member of the Human Trafficking Response Team
Human Trafficking Awareness Coordinator
RCMP North West Region Immigration and Passport Section
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Manitoba:

Jackie Anderson
Ma Mawi Chi Itata Centre
Winnipeg

Dianna Bussey
Salvation Army Territorial Anti-Human Trafficking Network
Winnipeg

Sgt. Bob Chrismas
Missing Persons Unit
Criminal Investigation Bureau
Winnipeg Police Department
Winnipeg

Rochelle Drury
Site Manager
Ma Mawi Little Sisters Program
Winnipeg

Grand Chief Ron Evans
Assembly of Manitoba Chiefs
Long Plain First Nation
Winnipeg

Catarina Ferlaino
External Resource Development
Assembly of Manitoba Chiefs
Winnipeg

Suzanne Gervais
Member, Human Trafficking Response Team
Director, Victim Services
Manitoba Justice
Winnipeg

Jamie Rogers
Human Trafficking Response Team and
Canadian Border Services Agency
Winnipeg

Jane Runner
Program Manager, Transition, Education and Resources for Females
New Directions
Winnipeg

Wendy Scheirich
Coordinator, Sexually Exploited Youth Strategy
Department of Family Services and Consumer Affairs
Winnipeg

Joy Smith
Member of Parliament
Winnipeg

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Ottawa

Naomi Baker
Founder
Canada Fights Human Trafficking
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Social Policy, National Headquarters, Strategic Policy and Priorities Sector
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Camille Karbassi
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APPENDIX C

Literature Reviewed for an Exploration of Best Practices in Response to Human Trafficking in Canada

Canadian Sources (Reports, Books, Conferences & Symposia)

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